

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF )  
 CHAMPAIGN

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input checked="" type="checkbox"/> Reverse <u>Accident</u>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <u>up</u>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mary Jane Cawood,  
 Petitioner,

vs.

NO: 11 WC 34138

Robinson School District,  
 Respondent,

**141WCC0241**

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical both incurred and prospective, temporary total disability and permanent partial disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission finds that Petitioner proved that she sustained accidental injuries that arose out of and in the course of her employment.

The Commission also finds that Petitioner is entitled to temporary total disability from May 10, 2011 through August 17, 2011 representing 14 2/7 weeks as well as a loss of use of 35% of the left hand and 10% of the left arm.

Petitioner was a school bus driver for the Respondent. On May 9, 2011, after finishing her evening route she grabbed her paperwork and walked across the school's parking lot toward the bus barn to turn the paper work in. Petitioner walked over an area of the lot where the gravel

14IWC0241

had washed away and the concrete surface was about 1.5 inches higher than the gravel surface. She testified that she hit the toe of her sandal against the raised concrete area causing her to fall forward. She fell onto her left side and could not get up. (Transcript Pgs. 16-17)

She called for assistance and Rip York, Respondent's mechanic, came out of the bus barn and helped her up. (Transcript Pgs. 21-22)

Rip York testified and agreed that the parking lot was asphalt and that the concrete and asphalt do meet but there is no lip other than just a separation where it is blacktop to concrete. He admitted on cross examination that the bus parking lot is gravel and that the gravel is lower than the concrete because some people turn into the lot and cause the gravel to move. He testified that the gravel is about an inch to two inches lower than the concrete. He further admitted that he did not witness the accident. He is just testifying to where Petitioner was when he picked her up. He is unable to testify to where she fell. (Transcript Pgs. 42-54)

Petitioner was taken to Crawford Memorial Hospital on the date of the incident. According to the Hospital's records, the Petitioner stated that she was walking to work when she tripped where the gravel and concrete meet. (Petitioner Exhibit 1)

When an injury to an employee takes place in an area which is the usual route to the employer's premises, and the route is attendant with a special risk or hazard, the hazard becomes part of the employment. Special hazards or risks encountered as a result of using a usual access route satisfy the "arising out of" requirement of the Act. Bommarito v. Industrial Comm'n., 82Ill.2d 191, 195, 412 N.E.2d 548 (1980).

In the case at hand, Petitioner was taking her usual route to the bus barn through a parking lot owned and controlled by her employer. The Petitioner gave a history to Crawford Medical Hospital that she tripped over where the gravel and the concrete meet.

Rip York testified he did not see the Petitioner fall.

Terry Roche testified that there was asphalt in the area where Petitioner was found but admitted, as did Mr. York, that sometimes there is loose gravel found on top of the asphalt. (Transcript Pgs. 61-65)

The Commission finds the Petitioner's testimony to be credible. She gave a consistent history to Crawford Medical Hospital. Both of the Respondent's witnesses did not see her fall and their testimony regarding the condition of the parking lot does not dispute Petitioner's history.

14IWC0241

The Commission finds that Petitioner proved that she sustained accidental injuries to her left arm and left hand.

The Commission also finds that the Petitioner's injuries to her left arm and hand are causally connected to this accident. No evidence was offered regarding any problems Petitioner had to her left hand and arm prior to this accident. The Petitioner testified credibly that after her toe struck the concrete where the gravel had washed away, she tumbled forward and fell on her left wrist, forearm and left knee.

Petitioner came under the care of Dr. Fenwick, who returned her to work without restrictions on August 11, 2011. Petitioner is entitled to temporary total disability from May 9, 2011 through August 17, 2011. (Petitioner Exhibit 2, Respondent Exhibit 2)

X-Ray's taken on the Petitioner's left wrist and forearm revealed an acute comminuted articular distal left radial fracture with moderate apex dorsal angulation and subtle impaction. There were also arthritic changes in her left wrist. There was also an acute radial neck with minimal impaction. These X-Rays were taken on May 9, 2011. (Petitioner Exhibit 4-7)

Dr. Fenwick performed an open reduction with internal fixation with a volar plate of the left Colles fracture. (Petitioner Exhibit 8)

At the Arbitration hearing the Petitioner testified that she doesn't have "too much" problems with her left elbow. "It just didn't heal right."

She has trouble with it when she washes buses. The next day she can hardly move it. (Transcript Pg. 25)

In regard to her left wrist she testified that she has a lot of trouble with it. She does not have much grip and has pain turning a knob or opening a jar. (Transcript Pg. 25)

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$416.69 per week for a period of 14 2/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$375.00 per week for a period of 86.8 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the loss of use of the left hand to the extent of 35% and the loss of use of the left arm to the extent of 10%

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner for all medical expenses contained in Petitioner's Exhibit 11 under §8(a) of the Act and 8-2.


IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

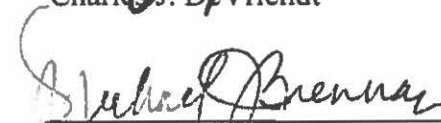
14IWCC0241

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 01 2014

  
Charles J. DeVriendt

  
Michael J. Brennan

CJD/HF  
O: 1/29/14  
049

#### DISSENT

I respectfully dissent from the Majority's Decision to reverse the Arbitrator's Decision.

The Arbitrator found that Petitioner failed to prove she sustained injuries arising out of and in the course of her employment on May 9, 2011. Petitioner did not discuss with Mr. York or Mr. Roche why she thought she fell; she testified that she was never asked.

The records from the Crawford Memorial Hospital emergency department note that Petitioner reported tripping where the gravel met the concrete. Mr. York testified that the bus lot is gravel; the regular parking lot is asphalt with some loose gravel. He testified that there is a concrete drive as well. Where the asphalt meets the concrete drive there is no lip, just a separation. In the area where the concrete meets the gravel there is a one to two inch height difference.

Petitioner testified that she was wearing sandals as she crossed the gravel parking lot and when she came to the place where the gravel met the concrete, the toe of her sandal bent back under her foot. Mr. York did not see Petitioner fall but he did help her to get up.

Mr. Roche testified that the area where there is gravel abutting concrete is not where Petitioner was found. He testified that the area where concrete and gravel meet is "clear down next to Jackson Street" and that it is asphalt in the area where Petitioner was found. The difference in height between the asphalt and the concrete is not noticeable, according to Mr. Roche. He did not think the "gap" could be big enough to fit a dime into.


Petitioner's testimony about her sandal catching on the concrete is not corroborated by the medical records. On the day after the accident Petitioner told Dr. Fenwick that she was unsure what she had tripped over. Petitioner also testified that the gravel was "washed away" from the concrete, forming a hole, but Mr. York denied that he saw any holes on the date of accident. Called for rebuttal, Petitioner marked her path on the Arbitrator's Exhibit #6 and then



14IWCC0241

initialed where she fell, however this is not the same place where Mr. York testified that he found Petitioner.

Compensability depends entirely on whether Petitioner proved that she fell where the gravel met the concrete. The Arbitrator's Decision concluding that Petitioner failed to prove this fact was well reasoned and I would affirm and adopt the Arbitrator's Decision in its entirety.

A handwritten signature in cursive script, reading "Ruth W. White". The signature is written in dark ink and is positioned above a horizontal line.

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

CAWOOD, MARY JANE

Employee/Petitioner

Case# 11WC034138

ROBINSON SCHOOL DISTRICT

Employer/Respondent

**14IWCC0241**

On 1/15/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1580 BECKER SCHROADER & CHAPMAN PC  
TODD J SCHRODER  
3673 HWY 111 PO BOX 488  
GRANITE CITY, IL 62040

0180 EVANS & DIXON LLC  
MARILYN C PHILLIPS  
211 N BROADWAY SUITE 2500  
ST LOUIS, MO 63102

STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF CHAMPAIGN )

☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
 ARBITRATION DECISION

**MARY JANE CAWOOD**

Employee/Petitioner

Case # **11 WC 034138**

v.

Consolidated cases: **N/A**

**ROBINSON SCHOOL DISTRICT**

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Urbana**, on **November 20, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

On May 9, 2011, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned \$32,500.00; the average weekly wage was \$625.00.

On the date of accident, Petitioner was 54 years of age, *married* with 0 children under 18.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$0.

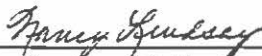
Respondent is entitled to a credit for medical bills paid through its group medical plan for which credit may be allowed under Section 8(j) of the Act.

## ORDER

Petitioner failed to prove she sustained an accident that arose out of her employment with Respondent. Petitioner's claim for compensation is denied and no benefits are awarded.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
\_\_\_\_\_  
Signature of Arbitrator

January 10, 2013  
Date

JAN 15 2013

Mary Jane Cawood v. Robinson School District, 11 WC 034138**THE ARBITRATOR FINDS THE FOLLOWING FACTS:**

On May 9, 2011, Petitioner was 54 years of age and employed by Respondent as a school bus driver. After finishing her evening route she parked her bus, locked it up, grabbed some paperwork, and headed across the school's parking lot toward the bus barn to turn in her "stuff." Petitioner described the surface of the lot as part gravel and part concrete. She was walking, wearing sandals, and carrying her purse, a mileage sheet and some bus passes.

Petitioner testified that she walked over an area of the lot where the gravel had washed away and the concrete surface was about 1.5 inches higher than the gravel surface. Petitioner testified that she hit the toe of her sandal against the raised concrete area. The toe of her sandal bent back under her toes causing her to fall forward. The area of the lot where she fell was marked with an "X" on Arbitrator's Exhibits 5 and 6, drawings prepared at trial.

Petitioner tried to catch herself with her hand, and fell onto her left side. She could not get up off the ground and called for assistance. Rip York, a mechanic employed by Respondent, came out of the bus barn, helped her up, sat her on a chair, got ice packs for her arm, and called her husband. Mr. York testified that Petitioner did not say what caused her to fall.

Petitioner fell in an area of the parking lot where an asphalt surface met a concrete surface. There was some gravel on part of the lot. Mr. York testified that he saw where Petitioner fell when he helped her up off the ground. Mr. Roche, Respondent's transportation director, and building, grounds and athletic director viewed Arbitrator's Exhibits 5 and 6, and testified he was familiar with the area marked with the "X," and in fact, it was close to where he parked his car. His parking spot was marked with a "C" on Arbitrator's Exhibit 6. Mr. Roche inspected the area after Petitioner fell. Both Mr. York and Mr. Roche testified that the surface where Petitioner fell was level. Mr. York said there was no lip where blacktop and concrete met. Mr. Roche said any gap between where the concrete and asphalt met was not the width of a dime.

Petitioner's husband took her to Crawford Memorial Hospital where she gave a history of tripping in an area of the parking lot where the gravel and concrete met. She said that she fell onto her left side and complained of pain in her left wrist, forearm and knee. X-rays revealed a left wrist comminuted articular distal left radial fracture with moderate apex dorsal angulation and subtle impaction; a left acute radial neck and distal radial fractures; and, a left radial neck fracture with minimal impaction. She was placed in a temporary splint and a sling, and discharged with instructions to follow up with an orthopedist.

Petitioner saw Dr. Fenwick for left wrist and elbow evaluation on May 10, 2011. She told him that she got off the bus, was walking across a part concrete and part gravel parking lot, and fell. The doctor noted that she was "unsure if or what she tripped over." He diagnosed a left closed fracture of the radial neck and a left closed colles fracture. He told her to continue wearing the splint and sling, authorized her to remain off work, and instructed her to follow-up in a week.

On May 17, 2011, Dr. Fenwick recommended open reduction and internal fixation of the distal radius with Synthes Volar plate. Petitioner was referred to Pro-Rehab Occupational Therapy where she gave a history of falling in a parking lot. The emergency room dressings were removed. Her wrist and forearm were bulked with dressings to simulate post op dressings. A Munster splint was fabricated for her left wrist and forearm. Her forearm and wrist were placed in neutral and she was told to wear the splint fulltime until surgery.

On May 19, 2011 Dr. Fenwick performed an open reduction and internal fixation with a volar plate of the left Colles fracture. The post-operative diagnosis was left closed Colles fracture. Petitioner returned to ProRehab on May 23, 2011. Her splint was reformed with addition of a bivalve piece for greater support. The incision was cleansed and redressed. The therapist recommended skilled rehabilitative therapy in conjunction with a home exercise program.

On May 26, 2011, Petitioner saw Dr. Fenwick's PA, John Combs. She said that she was experiencing some discomfort. She was wearing her brace and reported some finger stiffness. The discomfort in her elbow was improving. Her range of motion was also improving but was limited due to the splint. On physical examination of Petitioner's left elbow Mr. Combs found limited active range of motion with complaints of pain over the dorsal radial head. Examination of the left wrist revealed edema but near normal range of motion. X-rays showed continued slight displacement of the left elbow radial head fracture, and intact left wrist hardware with the fracture in good alignment. Mr. Combs instructed Petitioner to continue her therapy, released her to return to right handed work, and asked her to see Dr. Fenwick in three weeks. Petitioner returned to work at her second job as a night manager in a grocery store for about a week. She took off again because she had been required to use her hand "a lot."

When Petitioner returned to ProRehab on May 26, 2011, her splint was adjusted. The plan was to remove sutures and begin wrist range of motion. ProRehab adjusted the splint again on June 1, 2011, issued a sling for elbow and forearm support, and removed her staples. The plan was to progress with range of motion and scar management.

On June 14, 2011, Petitioner told Dr. Fenwick that her left wrist was doing well. She was wearing the splint when out of the house. She complained of pain when picking up and gripping objects, but was taking no medication for her wrist. Petitioner complained of intermittent elbow pain, and limited elbow range of motion with extension. She was not wearing a splint on the elbow. Petitioner was continuing therapy at ProRehab and home exercises for her wrist and elbow.

Physical examination of the wrist on June 14, 2011 revealed normal sensation; intact incision; and, near normal range of motion. Examination of the elbow revealed no edema or evidence of acute injury, but limited range of motion. X-rays showed distal radius plating revealed left wrist plating with good alignment, and a left elbow radial neck fracture with mild angulation. Dr. Fenwick found Petitioner was healing very well. He told her to continue therapy and wearing the splint/brace. He allowed her to work with no lifting, pushing or pulling over five pounds with the left hand, and asked her to return in four weeks on July 15, 2011.

When Petitioner went to ProRehab on June 14, 2011, her splint was reduced to a volar piece only. Her motion was progressing very well. She denied pain or discomfort, and was able to perform strengthening exercises with no increase in pain. The plan was to continue with strengthening and range of motion.

Mr. Combs saw Petitioner on July 19, 2011. She complained of experiencing left wrist pain after pulling clothes out of her washer and putting them into the dryer. She reported good range of motion and no pain in her left elbow, with an occasional popping sensation. On physical examination of the left wrist he noted radial edema. The incision was intact. There was tenderness over the radial side distal wrist and incision area. Her sensory exam was normal. Her range of motion was near normal, but with pain on extension. Her left elbow examination revealed pain over the cubital radial head, and near normal range of motion. X-rays showed left wrist hardware intact with the fracture healing well, and angulation at the radial head fracture with good healing. Petitioner was advised to continue therapy and wearing the splint/brace. Her lifting limitations were reduced to seven pounds, and she was asked to follow up in four weeks on August 16, 2011.

Petitioner was seen at ProRehab on July 19, 2011. She had been wearing the splint after feeling a pop in her wrist at home, and her range of motion was limited due to inactivity and edema. Range of motion exercises



were restarted due to stiffness. She was independent in her home exercise program. Petitioner returned to work on August 18, 2011.

When Petitioner returned to Dr. Fenwick's office on September 12, 2011, she was working limited from lifting, pushing, or pulling more than seven pounds with her left hand. She reported experiencing pain in her wrist and thumb since her last visit, with occasional numbness at the base of the left thumb. She said that after her bus route her wrist and the top of her hand were swollen, and pain radiated up her forearm. She used ice for pain relief. Regarding her left elbow, she complained of a popping sensation, but no pain, and good range of motion.

On September 12, 2011, physical examination of Petitioner's left wrist revealed normal palpation of soft tissue, tendon and bony structures; normal sensory exam; and, full active range of motion. On physical examination of the left hand the doctor found pain over the first carpometacarpal joint, normal sensation, near normal range of motion, and positive first carpometacarpal compression test. The left elbow physical examination showed normal palpation; and, full range of motion. X-rays revealed left wrist headed radius fracture with intact volar plate; left thumb marked basalar osteoarthritis; and, left elbow healed radial neck fracture. The doctor's assessment was left status post open reduction and internal fixation with volar plate colles fracture; closed fracture of the radial neck; and, CMC arthritis. Petitioner was instructed to continue home therapy and follow up in four weeks. She was referred to ProRehab for evaluation. The doctor noted that her thumb arthritis was causing pain and treatment options included a spika [sic] splint, injection or surgery. He provided no opinion as to the cause of the arthritis or its relationship to the May 9, 2011 incident.

Petitioner was seen at ProRehab on September 12, 2011. She said she had begun experiencing pain at the base of her thumb about one month earlier. She was working full duty. A spica splint was fabricated for her left wrist and thumb. She was told to wear it full time to allow rest at the CMC joint. Therapy of two visits a week or four weeks was recommended.

On October 10, 2011, Dr. Fenwick released Petitioner from care without restriction to follow up as needed. Thereafter, Petitioner continued working for Respondent as a school bus driver. At Arbitration she testified that she experiences weak grip in her left hand, and that her left elbow hurts if she uses it to perform activities such as washing a bus. Her hobbies include crafts, crocheting, and some gardening.

#### **THE ARBITRATOR CONCLUDES:**

For an injury to be compensable under the Illinois Workers' Compensation Act it must arise out of the employment, from a risk connected with or incidental to the employment creating a causal connection between the employment and the accidental injury. To determine the compensability of this claim the Arbitrator will analyze the nature of the injury sustained by Petitioner, noting that "risks to employees fall into three groups: (1) risks distinctly associated with the employment; (2) risks personal to the employee, such as idiopathic falls; and (3) neutral risks that have no particular employment or personal characteristics." First Cash Financial Services v. Industrial Comm'n, 367 Ill. App. 3d 102, 105, 853 N.E.2d 799 (2006), Baldwin v. The Illinois Workers' Compensation Commission; Baldwin v. Illinois Workers' Compensation Commission, 409 Ill.App.3d 472 (4th Dist. 2011).

Injuries occurring in employer-controlled parking lots have been found compensable where the injury is caused by some hazardous condition in the parking lot. Conversely, an injury resulting from a condition to which Petitioner would have been equally exposed apart from her employment is not compensable under the Illinois Workers' Compensation Act. Caterpillar Tractor v. The Industrial Commission 129 Ill. 2d 52, 51 N.E. 2d 665, 1989 Ill. Lexis 85,133 Ill. Dec. 454 (1989).

Petitioner testified that she caught her toe in a raised area in the parking lot surface where the concrete met asphalt. She testified that as soon as she fell she knew it was because she hit her toe on the raised area.

There was no mention of tripping over this raised area in the records from Crawford Memorial Hospital medical records, Dr. Fenwick, or ProRehab. Her Application for Adjustment of Claim merely states that Petitioner "fell in parking lot at bus barn." Further, on May 10, 2011, one day after the accident, Dr. Fenwick reported that Petitioner was "unsure if or what she tripped over." Mr. York assisted Petitioner on May 9, 2011, and helped her up after she fell. He testified that Petitioner did not say what caused her to fall. Petitioner's history of tripping over the raised area in the parking lot was not reported prior to the trial of her claim.

The Arbitrator finds more credible the testimonies of Mr. York and Mr. Roche who described the surface of the parking lot where Petitioner fell as level and without defect. Mr. York saw the area when he helped Petitioner up off the ground. Mr. Roche parks his car next to the accident site and inspected the area for "issues," after learning Petitioner had fallen. Based upon their testimonies, the Arbitrator concludes that there was no hazardous condition of the premises which caused or contributed to Petitioner's fall.

Walking on surfaces of gravel, concrete, asphalt, or some combination thereof is not a risk distinctive or peculiar to Petitioner's employment, it is a risk to which the general public is regularly exposed. Nothing in the record distinguishes Petitioner's acts from that of any other person walking in a parking lot. Petitioner was no more likely to fall than she would have been had she not been in the course of her employment.

Therefore, the Arbitrator concludes that Petitioner did fall in a parking lot owned and maintained by Respondent; however, there was insufficient evidence to prove that Petitioner's fall was caused by a defect in that parking lot, or that she was exposed to a greater risk of falling when walking in a parking lot than is the general public. Petitioner's injury was not caused by a risk distinctly associated with her employment.

There is no testimony or other evidence to suggest that Petitioner's fall was idiopathic in nature.

Absent Petitioner's testimony that she caught her toe on a raised area on the parking lot surface, there is no explanation for the cause of her fall. The Arbitrator has found that testimony not credible and uncorroborated by any other evidence. Petitioner's fall is unexplained. For an injury caused by an unexplained fall to arise out of her employment, Petitioner must present evidence which supports a reasonable inference that the fall stemmed from a risk related to that employment, as an injury arising from a neutral risk to which the general public is equally exposed does not arise out of the employment. Baldwin v. Illinois Workers' Compensation Commission, 409 Ill.App.3d 472 (4th Dist. 2011).

As stated above, the Arbitrator finds that Petitioner failed to present evidence sufficient to prove the act of walking across Respondent's parking lot exposed her to a risk greater than that faced by the general public.

Petitioner failed to present evidence sufficient to prove she sustained an accident arising out of her employment. Based upon her conclusion on this issue, it is unnecessary for the Arbitrator to reach the other issues presented at Arbitration. Petitioner's claim is denied.

\*\*\*\*\*

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF WILLIAMSON )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

William Blake Reed,

**14IWCC0242**

Petitioner,

vs.

NO: 12 WC 25897

State of Illinois, Shawnee Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability and permanent disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 7, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: **APR 01 2014**

MJB:bjg  
 0-3/25/14  
 52

  
 Michael J. Brennan

  
 Thomas J. Tyrrell

  
 Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

14IWCC0242

**BLAKE REED, WILLIAM**

Employee/Petitioner

Case# **12WC025897**

**SOI/SHAWNEE CORRECTIONAL CENTER**

Employer/Respondent

On 8/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC  
#6 EXECUTIVE DR  
SUITE 3  
FAIRVIEW HTS, IL 62208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS  
2101 S VETERANS PKWY\*  
PO BOX 19255  
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL  
FARRAH L HAGAN  
601 S UNIVERSITY AVE SUITE 102  
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS  
ATTORNEY GENERAL  
100 W RANDOLPH ST  
13TH FLOOR  
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT  
WORKERS' COMPENSATION CLAIMS  
PO BOX 19208  
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy  
pursuant to 820 ILCS 305/14

AUG 7 2013



*[Signature]*  
KIMBERLY B. JANAS Secretary  
Illinois Workers' Compensation Commission

STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF WILLIAMSON )

☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)(18))  
☒ None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
 ARBITRATION DECISION**

William Blake Reed  
 Employee/Petitioner

Case # 12 WC 25897

v.

Consolidated cases: n/a

State of Illinois/Shawnee Correctional Center  
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on June 13, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

On June 20, 2012, Respondent was operating under and subject to the provisions of the Act. 2

On this date, an employee-employer relationship did exist between Petitioner and Respondent.

On this date, Petitioner did sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned \$52,922.00; the average weekly wage was \$1,019.08.

On the date of accident, Petitioner was 31 years of age, single with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0.00 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$0.00.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

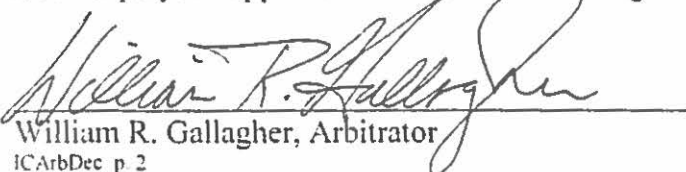
## ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability of \$611.45 per week for 22 weeks because the injuries sustained caused the four percent (4%) loss of use of the body as a whole (20 weeks) as provided in Section 8(d)2 of the Act and two (2) weeks disfigurement to the left elbow as provided in Section 8(c) of the Act.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
William R. Gallagher, Arbitrator  
ICArbDec p. 2

August 5, 2013  
Date

AUG 7 - 2013



## Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment for Respondent on June 20, 2012. According to the Application, Petitioner was restraining inmates and sustained injuries to the right and left shoulders, right hip/leg, buttocks, body as a whole, back, neck and right and left arms/elbows. The parties stipulated that Petitioner sustained a work-related accident and the disputed issues at trial were causal relationship as it related to nature and extent, liability for physical therapy bills and the nature and extent of disability.

Petitioner was employed by Respondent as a Correctional Officer and, on June 20, 2012, he sustained injuries to multiple areas of the anatomy as a result of breaking up a fight between two inmates. Petitioner initially sought medical treatment at Rural Health on June 22, 2012, where he was seen by Cheryl Fuller, a CNP. At that time, Petitioner had multiple abrasions to both elbows, right shoulder pain, left sided neck pain, and low back pain which went into his right buttock. X-rays were obtained of the low back and pelvis both of which were negative. Petitioner was given some medication and instructed to return in one week. Petitioner returned to Rural Health on June 29, 2012, and he was seen by Dr. Qi Liu, and his primary complaint was low back pain that was aggravated by bending. Petitioner had not missed any time from work because of this injury. On clinical examination, Petitioner had tenderness in the low back and straight leg raising was positive on the right side. Dr. Liu continued Petitioner's medication and referred him to physical therapy.

Petitioner received physical therapy at Union County Hospital between July 3, 2012, and September 19, 2012. On July 30, 2012, Petitioner was seen by Dr. Matthew Gornet, an orthopedic surgeon, and Petitioner informed Dr. Gornet of the work-related accident of June 20, 2012, as well as a prior back injury that had occurred in January, 2010. In regard to the prior back injury, Petitioner received chiropractic treatment and an MRI was obtained. Dr. Gornet reviewed the report of the prior MRI and noted that it revealed some disc pathology at L4-L5. Dr. Gornet opined that Petitioner had structural pain and opined that Petitioner's current symptoms were related to his work injury. Dr. Gornet recommended that a new MRI scan be obtained, that Petitioner continue with physical therapy and continue to work full duty.

On September 24, 2012, Petitioner underwent an MRI scan which revealed an annular tear at L4-L5 which was increased in size when compared to the prior MRI of June 30, 2010. A central disc bulge at L5-S1 was also noted. Dr. Gornet saw Petitioner on that date and noted that he was responding to conservative care. Dr. Gornet decided to refrain from giving Petitioner any steroid injections. Dr. Gornet saw Petitioner again on November 19, 2012, and noted that Petitioner had a low level of tolerable symptoms and that he continued to work full duty. Dr. Gornet opined that Petitioner was at MMI.

At the direction of the Respondent, on September 7, 2012, Dr. Christopher LeBrun, an orthopedic surgeon, conducted a utilization review pertaining to the issue of whether Petitioner's physical therapy treatments from August 16, 2012, to September 4, 2012 were medically necessary. Dr. LeBrun opined that the physical therapy obtained by Petitioner during this period time was not medically necessary primarily because when he reviewed the physical therapy

records, Petitioner did not report any improvement of his symptoms. Dr. LeBrun was deposed on February 18, 2013, and his deposition testimony was received into evidence at trial. Dr. LeBrun reaffirmed his opinion that the physical therapy obtained by Petitioner between August 16, 2012, and September 4, 2012 (five visits), were not medically necessary.

At trial Petitioner testified that the physical therapy did provide him with temporary relief of his symptoms to where he could continue to work. Petitioner still has complaints of low back pain which he describes as a dull ache. Any physical activity causes an aggravation of his symptoms. Petitioner testified that as a Correctional Officer he is required to stand for virtually the entire eight hour working day. Petitioner also testified that his back symptoms have impaired his ability to exercise to where he has experienced a weight gain of approximately 15 pounds. The injuries to the other areas of Petitioner's anatomy totally resolved with the exception of a circular shaped scar on his left elbow which the Arbitrator did observe at the time of trial.

#### Conclusions of Law

In regard to disputed issues (F) and (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner has sustained permanent partial disability to the extent of four percent (4%) loss of use of the body as a whole and two (2) weeks disfigurement to the left elbow.

In support of this conclusion the Arbitrator notes the following:

The Petitioner sustained injuries to multiple areas of the anatomy on June 20, 2012; however, all of the Petitioner's symptoms, other than those to the low back, totally resolved. Dr. Gornet opined that Petitioner did sustain an aggravation of his pre-existing low back condition and there was no medical opinion to the contrary.

Neither Petitioner nor Respondent tendered into evidence an AMA impairment rating report.

Petitioner is a Correctional Officer and this occupation does require him to be on his feet for long periods of time and there are other physical demands of his job which, as the facts of this case clearly indicate, can include breaking up fights between inmates.

At the time of this accident Petitioner was 31 years of age so he will have to live with the effects of this injury for very long time.

There was no evidence that this injury will have any effect on Petitioner's future earning capacity.

The medical treatment records confirm that Petitioner sustained a low back injury that was an aggravation of a pre-existing back condition. Comparison of the MRI scans taken before and after the accident indicated that there was an increase in the size of the annular tear at L4-L5.

The Petitioner still has a visible circular shaped scar on his left elbow which the Arbitrator observed at the time of trial.

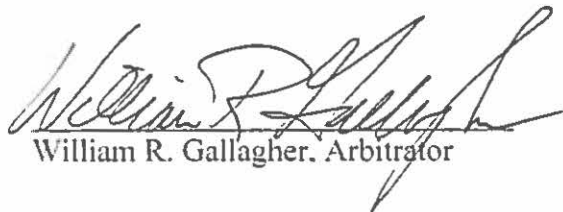
In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment obtained by Petitioner, including the disputed period of physical therapy treatment, was reasonable and necessary and that Respondent is liable for payment of the medical bills associated therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In support of this conclusion the Arbitrator notes the following:

Both of Petitioner's treating physicians, Dr. Liu and Dr. Gornet, referred Petitioner to physical therapy. Petitioner credibly testified that physical therapy provided him with some relief of his symptoms which enabled him to continue to work. The Arbitrator is not persuaded by the opinion of Respondent's utilization review physician, Dr. LeBrun.



William R. Gallagher, Arbitrator

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF WILLIAMSON )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rick Belton, Sr.,

Petitioner,

vs.

State of Illinois, Menard Correctional Center,

Respondent.

**14IWCC0243**

NO: 11 WC 32265

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses and prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 1, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED: **APR 01 2014**

MJB:bjg  
0-3/25/2014  
52

  
Michael J. Brennan

  
Thomas J. Tyrrell

  
Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0243

BELTON SR, RICK

Employee/Petitioner

Case# 11WC032265

MENARD CORRECTIONAL CENTER

Employer/Respondent

On 7/1/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC  
#6 EXECUTIVE DR  
SUITE 3  
FAIRVIEW HTS, IL 62208

1350 CENTRAL MGMT SERVICES RISK MGMT  
WORKERS' COMPENSATION CLAIMS  
PO BOX 19208  
SPRINGFIELD, IL 62794-9208

0558 ASSISTANT ATTORNEY GENERAL  
FARRAH L HAGAN  
601 S UNIVERSITY AVE SUITE 102  
CARBONDALE, IL 62901

0502 ST EMPLOYMENT RETIREMENT SYSTEMS  
2101 S VETERANS PKWY\*  
PO BOX 19255  
SPRINGFIELD, IL 62794-9255

0498 STATE OF ILLINOIS  
ATTORNEY GENERAL  
100 W RANDOLPH ST  
13TH FLOOR  
CHICAGO, IL 60601-3227

CERTIFIED as a true and correct copy  
pursuant to 820 ILCS 305/14

JUL 1 - 2013



*[Signature]*  
KIMBERLY B. JANAS Secretary  
Illinois Workers' Compensation Commission

STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF Williamson )

☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
 ARBITRATION DECISION  
 19(b)

**Rick Belton, Sr.**

Employee/Petitioner

v.

**Menard Correctional Center**

Employer/Respondent

Case # **11 WC 32265**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Herrin, Illinois**, on **April 17, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☒ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☐ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☐ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_



## FINDINGS

On the date of accident, **08/03/2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of the assertion of the alleged accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, the Petitioner earned \$63,755.00; the average weekly wage was \$1,226.06.

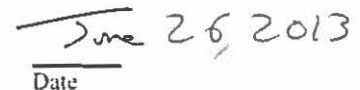
Respondent would be entitled to a credit under Section 8(j) of the Act.

## ORDER

For reasons set forth in the attached decision, the requested benefits under the Act are denied.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Signature of Arbitrator  
Date

JUL -1 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RICK BELTON, SR.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 11 WC 32265
	)	
STATE OF IL – MENARD C.C.,	)	
	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

This matter was heard pursuant to Sections 8(a) and 19(b) of the Act.

STATEMENT OF FACTS

The petitioner began working as a corrections officer at Pontiac Correctional Center in September 1981. He worked various assignments at that facility for approximately a year, and then was unemployed for approximately two years. He was then hired at Menard Correctional Center as a correctional officer in June 1984. He began at the C-1 unit, a medium security kitchen unit. Less than a year after that, he shifted to other positions. Regarding this period, he testified Pontiac was more strenuous except for the condemned unit. Beginning in 1986, he transferred to general population until 1997. At that time he transferred to the health care unit as second floor security or "roving officer." He worked there until January 2010, when he transitioned to supply supervisor. He was initially temporarily assigned to those duties and thereafter was permanently reassigned. In this position, he would load and unload supplies from trailers, work as a cashier in the commissary, and supervise inmate workers. On August 23, 2011, he filed an Application for Adjustment of Claim asserting repetitive trauma with an effective date of loss of August 3, 2011. The petitioner continued to work his regular assignment until his retirement on June 1, 2012.

On August 3, 2011, the petitioner presented to Dr. George Paletta. He reported pain in the arms with weakness in the hands without acute trauma. He reported he "had to turn keys, a lot of keys." The petitioner stated that recently he had developed numbness and tingling into the first three fingers. Physical examination revealed no obvious atrophy or deformity with unremarkable ulnar nerve exam and negative Tinel's sign. Petitioner had a positive Phalen's test with reproduction after about 15 seconds. He Dr. Paletta assessed possible carpal tunnel syndrome and specifically noted that there was no evidence of epicondylitis or cubital tunnel syndrome. Dr. Paletta recommended EMG study and use of night splints. See PX3.

The EMG study was performed on August 3, 2011. It demonstrated mild ulnar neuropathies, but the petitioner reported that the numbness did not involve the fifth fingers, a finding inconsistent with cubital tunnel syndrome. The readings for carpal tunnel were normal. PX4. Dr. Paletta reviewed the EMG on August 10, and noted that Dr. Phillips believed that the petitioner might have epicondylitis given some tenderness in that area. Dr. Paletta noted that his examination had not suggested such and that while the petitioner had some evidence of cubital tunnel syndrome, the petitioner's pain complaints were not consistent with such a diagnosis. He recommended against surgical intervention at that time. PX3.

On October 5, 2011, Dr. Paletta saw the petitioner again, and noted that EMG studies had been normal. The petitioner "now has a myriad of complaints" and asserted that his symptoms had worsened. However, the symptoms of nerve entrapment continued to spare the little finger, again inconsistent with cubital tunnel syndrome. Given the benign EMG, "entirely normal" cubital tunnel examination at that presentation, and the petitioner's "atypical" complaints, Dr. Paletta recommended against surgical intervention. He suggested the petitioner seek a second opinion. PX3.

On December 5, 2011, the petitioner saw Dr. Young. His history at this time was of three to four years of symptoms, somewhat longer than reported to Dr. Paletta and Dr. Phillips, and at this time reported numbness and tingling for "quite some time." He reported a history significant for smoking, hypertension and high cholesterol. Dr. Young ordered repeat EMG studies. PX5.

On December 16, 2011, the petitioner presented to Dr. Brent Newell for nerve conduction studies. This study demonstrated demyelinating mid ulnar neuropathy, though the needle EMG was within normal limits. No evidence of carpal tunnel syndrome or cervical radiculopathy was observed. PX6.

On December 22, 2011, Dr. Young noted no subluxation of the ulnar nerve but continued complaints of symptoms. He discussed treatment options and the petitioner requested to proceed with bilateral ulnar nerve transposition surgery. PX5.

On February 20, 2012, Dr. Anthony Sudekum reviewed the petitioner's medical records, job description and job demand analysis. He had also toured the Menard Correctional Center. Dr. Sudekum noted that the records contained references to inconsistent and subjective complaints and inconsistent findings on physical examination. He observed that the petitioner's earlier examinations showed history of complaints consistent with carpal tunnel syndrome and specifically inconsistent with cubital tunnel syndrome. At the subsequent evaluation by Dr. Young, however, these complaints had been effectively replaced by descriptions of cubital tunnel syndrome symptoms. Dr. Sudekum further noted findings consistent with symptom magnification, especially given the negative EMG for median neuropathy and equivocal for ulnar nerve abnormality. Dr. Sudekum opined the claimant was a poor surgical candidate. Dr. Sudekum opined that the petitioner's prior employment as a correctional officer at Menard Correctional Center did not cause or contribute to his condition given the chronology of the symptoms

presented, and further opined that the supply supervisor position would not have caused or contributed to such based upon his knowledge of this position and job demands.

Dr. Young and Dr. Sudekum testified in deposition to their respective causal opinion analyses. PX9, RX11. The petitioner testified that retirement has not alleviated any of his symptoms and requested approval of the proposed ulnar nerve transposition surgery. He acknowledged that the health care unit did not use the Folger-Adams keys, but asserted that while assigned to the health care unit he would be assigned to other areas of the prison as needed. He testified that the commissary area did not require substantial use of keys.

### OPINION AND ORDER

In cases relying on the repetitive trauma concept, the claimant generally relies on medical testimony to establish a causal connection between the claimant's work and the claimed disability. See, e.g., *Peoria County Bellwood*, 115 Ill.2d 524 (1987); *Quaker Oats Co. v. Industrial Commission*, 414 Ill. 326 (1953). In this case, the claimant has failed to prove to a medical and surgical certainty that his condition is causally linked to his employment.

The petitioner's symptoms and history have shifted over time to conform to the objective testing. This calls into question the credibility of the complaints. Dr. Paletta's assessment was specifically negative for elbow pathology and had ruled out cubital tunnel syndrome from a clinical standpoint. It was only after the petitioner's negative tests for carpal tunnel syndrome that he described a symptom switch. Moreover, he reported to Dr. Young a long history of complaints in all his fingers, when he had specifically denied such to Dr. Paletta. While this might appear to be a minor distinction, it was in large part the specific description provided to Dr. Paletta and Dr. Phillips which they stated undermined any diagnosis of cubital tunnel. Dr. Young acknowledged that the petitioner's history of numbness and tingling would have involved the median nerve distribution when he saw Dr. Paletta, but when he saw Dr. Young it was in the ulnar nerve distribution. Dr. Paletta could not explain the asserted symptom description changes and did not recommend surgery. Dr. Sudekum's assessment parallels this, and notes the discrepancy cannot be credibly explained. He further undermines any causal analysis by noting his review of the job descriptions, job site analysis and personal observation, supporting his foundational basis for his opinion. Dr. Young's assessment is largely based on the claimant's history of complaints, which has been rendered suspect. Moreover, all physicians note non-occupational risk factors, such as smoking and hypertension. This record is insufficient to prove a causal link between the petitioner's employment and his claimed injuries, as the right to recover benefits cannot rest upon speculation or conjecture. *County of Cook v. Industrial Commission*, 68 Ill.2d 24 (1977). For the above reasons, the requested benefits under the Act are denied.

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF PEORIA )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Daniel Bunting,

Petitioner,

vs.

**14IWCC0244**

NO: 09 WC 52794

State of Illinois Department of Transportation,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, permanent disability, medical expenses, prospective medical care, notice, wages/rate, Sections 19(k) and 19(l) penalties and Section 16 attorney fees, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 20, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: APR 01 2014

MJB:bjg  
 0-3/25/2014  
 52

  
 Michael J. Brennan

  
 Thomas J. Tyrrell

  
 Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

14IWCC0244

**BUNTING, DANIEL W**

Employee/Petitioner

Case# **09WC052794**

**STATE OF ILLINOIS IDOT**

Employer/Respondent

On 8/20/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1824 STRONG LAW OFFICES  
TODD A STRONG  
3100 N KNOXVILLE AVE  
PEORIA, IL 61603

0502 ST EMPLOYMENT RETIREMENT SYSTEMS  
2101 S VETERANS PKWY\*  
PO BOX 19255  
SPRINGFIELD, IL 62794-9255

4390 ASSISTANT ATTORNEY GENERAL  
ERIN DOUGHTY  
500 S SECOND ST  
SPRINGFIELD, IL 62701

0498 STATE OF ILLINOIS  
ATTORNEY GENERAL  
100 W RANDOLPH ST  
13TH FLOOR  
CHICAGO, IL 60601-3227

1430 CMS BUREAU OF RISK MGMT  
WORKERS COMPENSATION MANAGER  
PO BOX 19208  
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy  
pursuant to 605 ILCS 805/14

AUG 20 2013



*[Signature]*  
KIMBERLY A. JANAS Secretary  
Illinois Workers' Compensation Commission



STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF PEORIA )

- ☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

### ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

DANIEL W. BUNTING,  
 Employee/Petitioner

Case # 09 WC 52794

v.  
 Consolidated cases: NONE.

STATE OF ILLINOIS, IDOT,  
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Peoria**, on **February 25, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

#### DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?  
 B. ☐ Was there an employee-employer relationship?  
 C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?  
 D. ☐ What was the date of the accident?  
 E. ☒ Was timely notice of the accident given to Respondent?  
 F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?  
 G. ☒ What were Petitioner's earnings?  
 H. ☐ What was Petitioner's age at the time of the accident?  
 I. ☐ What was Petitioner's marital status at the time of the accident?  
 J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?  
 K. ☒ What temporary benefits are in dispute?  
     ☐ TPD      ☐ Maintenance      ☒ TTD  
 L. ☒ What is the nature and extent of the injury?  
 M. ☒ Should penalties or fees be imposed upon Respondent?  
 N. ☒ Is Respondent due any credit?  
 O. ☐ Other: \_\_\_\_\_

## FINDINGS

On November 4, 2009, Respondent was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the alleged accident.

In the year preceding the injury, Petitioner earned \$76,700.00; the average weekly wage was \$1,475.00.

On the date of accident, Petitioner was 60 years of age, *married* with no dependent children under 18.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$8,250.20 for TTD, \$ 0.00 for TPD, \$ 0.00 for maintenance, and \$ 0.00 for other benefits, for a total credit of \$8,250.20.

Respondent is entitled to a credit of \$ 0.00 under Section 8(j) of the Act.

## ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$983.33/week for 20-6/7 weeks, commencing January 21, 2010 through June 15, 2010, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$664.72/week for 75 weeks, because the injuries sustained caused the 15% loss of use of his person as a whole, as provided in Section 8(d)2 of the Act.

Petitioner is now entitled to receive from Respondent compensation that has accrued from November 24, 2009 through February 25, 2013, and the remainder, if any, of the award is to be paid to Petitioner by Respondent in weekly payments.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Signature of Arbitrator JOANN M. FRATIANNI

August 15, 2013  
Date

AUG 20 2013

***C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?***

Petitioner was employed as a "snowbird" for Respondent. Petitioner testified he also worked concurrently with DWB Trucking, a company he has owned for approximately 16 years. Petitioner testified he typically worked for Respondent in the winter and early spring, depending upon the weather, and then worked for DWB from April through December. Petitioner testified that on November 24, 2009, while working for Respondent, he was moving barricades and sandbags when he injured his left arm.

Petitioner saw Dr. Dru Hauter with complaints of a left shoulder injury. Dr. Hauter prescribed an MRI to the left shoulder. (Rx1)

Over the weekend, Petitioner did not experience an improvement in his symptoms. He filled out an accident report for Respondent on November 30, 2009. (Rx1)

Based upon the above, the Arbitrator finds that Petitioner sustained an accidental injury that arose out of and in the course of his employment by Respondent on November 24, 2009.

***E. Was timely notice of the accident given to Respondent?***

Petitioner completed an accident report form for Respondent on November 30, 2009. Petitioner's supervisor also signed this report. (Rx1) Petitioner further testified he reported the injury to Mr. Brian Ruder, his supervisor, that same day.

Based upon the above, the Arbitrator finds that timely notice of this accidental injury was given Respondent, as defined by the Act.

***F. Is Petitioner's current condition of ill-being causally related to the injury?***

See findings of this Arbitrator in "C" and "E" above. Petitioner testified he reported an injury to his left and right shoulder to Mr. Rick Grausoff. The completed accident report dated November 30, 2009 and signed by Petitioner's supervisor, Mr. Brian Ruder, only reports a left shoulder injury. Respondent accepted an injury claim to the left shoulder and this part of the body is not in dispute. Respondent disputes the causal connection claim by Petitioner to the right shoulder.

Petitioner sought treatment with Dr. Dru Hauter on November 25, 2009 with complaints of pain to his right shoulder. Dr. Hauter prescribed a left shoulder MRI. This was performed on December 3, 2009 and revealed a SLAP tear along with a degenerative cyst formation and osteophyte presence in the head of the left humerus. Following the MRI, Petitioner was referred to Dr. Michael Merkley.

Petitioner saw Dr. Merkley on December 7, 2009 with complaints of left arm and shoulder pain. Dr. Merkley noted range of motion and strength to the right shoulder to be better than the left. (Px5) Dr. Merkley testified by evidence deposition that the right shoulder examination was important to serve as a control to compare against the left shoulder symptoms. Dr. Merkley testified his diagnosis was left shoulder pain. Physical therapy was prescribed. (Px5)

Petitioner returned to see Dr. Merkley and Dr. Hauter on January 5, 2010. Dr. Merkley noted therapy was aggravating Petitioner's neck. Dr. Hauter noted some tenderness in the right neck and upper arm. (Px3) Dr. Hauter diagnosed right shoulder sprain, from muscular irritation from an unknown cause. (Px3)

On January 21, 2010, Petitioner underwent left shoulder arthroscopy with Dr. Merkley in the form of a glenohumeral debridement and chondroplasty. Dr. Merkley also performed a subacromial decompression. (Px6) Post surgery, Petitioner saw Dr. Hauter on February 11, 2010 and reported no pain on the left. When seen by Dr. Merkley on May 4, 2010, Petitioner complained of left shoulder tightness but no pain. When seen again on June 15, 2010, Dr. Merkley released Petitioner to return to full duty work and felt he was at maximum medical improvement. (Px5)

Petitioner saw Dr. Daniel Troy, an orthopedic surgeon. This was at the request of Respondent. The examination took place on May 22, 2012 and included a review of medical records. Dr. Troy concluded the left shoulder injury was likely causally connected to the November 24, 2009 injury, but the right shoulder injury was not. (Rx3) Dr. Troy noted advanced degenerative changes in both shoulders and felt an activity of daily living was the underlying cause of the right shoulder injury. Dr. Troy agreed with Dr. Merkley that Petitioner reached maximum medical improvement on June 15, 2010.

Based upon the above, the Arbitrator finds that the left shoulder condition as noted above is causally related to the accidental injury of November 24, 2009.

Based further upon the above, the Arbitrator finds that the right shoulder condition is not causally related to the accidental injury of November 24, 2009. The Arbitrator notes that examining both shoulders is something orthopedic physicians perform for comparison purposes, which appears to have occurred in this case.

***G. What were Petitioner's earnings?***

Respondent allege an average weekly wage of \$825.00 (Rx1, Rx2). Petitioner alleges concurrent employment by DWB Trucking, Inc. Petitioner testified his supervisors, Doug Ackerman and Rick Grausoff, were aware of his concurrent employment. Petitioner testified his average weekly wage at DWB Trucking, Inc. was \$650.00, and introduced wage and tax records in support of this testimony. Respondent offered no evidence rebutting Petitioner's testimony and evidence as to the issue.

Based upon the above, the Arbitrator finds that Petitioner was concurrently employed while working for Respondent. The Arbitrator finds the average weekly wage at DWB to be \$650.00, and the average weekly wage from Respondent to be \$825.00. This results in a combined average weekly wage of \$1,475.00.

This Arbitrator so finds.

***J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?***

See findings of this Arbitrator in "C" and "F" above. Based upon these findings, the Arbitrator also finds Respondent to be not liable for the medical charges incurred for treatment to the right shoulder. All medical bills pertaining to the left shoulder were paid by Respondent.

***K. What temporary benefits are in dispute?***

See findings of this Arbitrator in "C" and "F" above.

Petitioner was off work commencing January 21, 2010 while undergoing treatment and surgery to his left shoulder. He was released to return to work and deemed at maximum medical improvement on June 15, 2010.

Based upon the above, the Arbitrator finds that the period of temporary total disability incurred as a result of this accidental injury commenced January 21, 2010 and ended on June 15, 2010, and that Petitioner is entitled to receive from Respondent compensation for this period of time.

All other claims for temporary total disability, including those periods relating to the right shoulder, are hereby denied.

*L. What is the nature and extent of the injury?*

See findings of this Arbitrator in "C" and "F" above.

Petitioner underwent a left shoulder arthroscopy on January 21, 2010. Post-operative notes reflect complaints of tightness and physical therapy was prescribed. Dr. Troy, who examined Petitioner at the request of Respondent, did indicate Petitioner had a probability of re-aggravation to the left shoulder. Petitioner was released to return to regular work and deemed at maximum medical improvement on June 15, 2010.

Petitioner testified to complaints of difficulty in raising his left arm above his shoulder and turning a doorknob.

Based upon the above, the Arbitrator finds the condition of ill-being to the left shoulder to be permanent in nature.

*M. Should penalties or fees be imposed upon Respondent?*

Petitioner claims penalties and attorneys fees against Respondent in this matter. The Arbitrator notes that Dr. Troy felt there was no causal connection between the condition of ill-being to the right shoulder and this accident.

Based upon the above, the Arbitrator finds that Respondent reasonably relied upon the opinion of Dr. Troy in this case.

Based further upon the above, all claims made by Petitioner for penalties and attorneys fees in this matter are hereby denied

*N. Is Respondent due any credit?*

The parties stipulated that Respondent paid Petitioner the sum of \$8,250.20 in temporary total disability benefits. This Arbitrator so finds.

Respondent also paid medical bills pertaining to treatment to the left shoulder in the amount of \$29,740.50. These bills are not in dispute between the parties and credit for these payments are also allowed.

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Yolanda Patino,  
  
Petitioner,

**14IWCC0245**

vs.

NO: 13 WC 07807

McDonald's,  
  
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection and prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 30, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.



IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 01 2014

  
\_\_\_\_\_  
Michael J. Brennan  
\_\_\_\_\_  
Thomas J. Tyrnell  
\_\_\_\_\_  
Kevin W. Lamborn

MJB:bjg  
0-3/17/2014  
52

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0245

PATINO, YOLANDA

Employee/Petitioner

Case# 13WC007807

McDONALD'S

Employer/Respondent

On 9/30/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.05% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2356 DONALD W FOHRMAN & ASSOC  
JACOB S BRISKMAN  
1944 W CHICAGO AVE  
CHICAGO, IL 60622

0210 GANAN & SHAPIRO PC.  
JULIA A MURPHY  
210 W ILLINOIS ST  
CHICAGO, IL 60654

1417CC0245

STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF COOK )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

**ILLINOIS WORKERS' COMPENSATION COMMISSION**  
**ARBITRATION DECISION**  
**19(b)**

**Yolanda Patino**  
 Employee/Petitioner

Case # **13WC 07807**

v.

Consolidated cases: **n/a**

**McDonald's**  
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Carolyn Doherty**, Arbitrator of the Commission, in the city of **Chicago**, on **August 9, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☐ What temporary benefits are in dispute?  
☐ TPD      ☐ Maintenance      ☐ TTD
- M. ☒ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

On the date of accident, **3/1/2013**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$14,200.68**; the average weekly wage was **\$273.09**.

On the date of accident, Petitioner was **23** years of age, *single* with **1** dependent children.

Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$1,698.70** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$2,541.82** for medical benefits, for a total credit of **\$4,240.52**.

Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

## ORDER

Petitioner failed to prove her current condition of ill being is causally related to the March 1, 2013 accident.

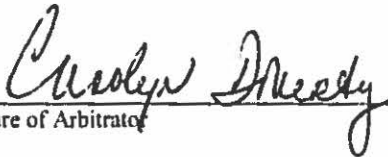
Respondent shall pay to Petitioner the reasonable and necessary medical expenses incurred through May 9, 2013 pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid

Petitioner's request for prospective medical is denied.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
\_\_\_\_\_  
Signature of Arbitrator

  
\_\_\_\_\_  
Date

SEP 30 2013

**FINDINGS OF FACT**

At trial, the parties stipulated to the issues of accident and timely notice. ARB EX 1. Petitioner, a 23 year old restaurant worker, was employed by Respondent McDonald's on 3/1/13. Petitioner testified that on that day, she was at work when she was struck by the cover of a soda machine. The cover was taken off the machine by a vendor who left it on the top of the machine. Petitioner testified that the cover fell from the top of the machine and struck her on her left shoulder and arm.

Petitioner testified that she felt fine initially but as time passed she felt pain on the left side of her neck and the top of her left shoulder. Petitioner testified that a manager took her to the hospital around 1:50 pm. Petitioner was taken to Adventist Glen Oaks Hospital. She offered a consistent history of accident and reported pain on her left neck and top of her left shoulder. The records reflect she was struck by a 20 to 30 pound metal lid that fell from 1 foot off the top of a shelf and struck her left neck and top of her left shoulder. Petitioner reported pain in her left clavicle as well as the left neck in the trapezius area radiating down to her left hand. Petitioner is right handed. PX 1. Tenderness was noted in these areas on exam. X-rays of these left clavicle and cervical spine were negative. The diagnosis was contusion of the shoulder and left trapezius muscle strain. PX 1. Petitioner was to apply ice packs and use an arm sling until the pain improved. She was given Flexeril and told to follow up with her doctor.

Petitioner testified that she first saw Dr. Barnabas on 3/8/13. The visit notes indicate that Petitioner tried to see another doctor prior to this date but he would not see her so she saw Dr. Barnabas at the Herron Medical Center. PX 2. Dr. Barnabas' records indicate that Petitioner reported pain in the neck at 8/10 going down the back to the lower back and left leg. Petitioner reported numbness and tingling down her left leg with weakness on walking. Left shoulder pain was also noted at 8/10. Dr. Barnabas ordered a left shoulder MRI which showed an intact rotator cuff and rotator cuff tendinitis and/or bursitis involving the distal supraspinatus tendon. PX 2. Dr. Barnabas also ordered a lumbar MRI which showed a mild annular disk bulge approximately 2mm slightly indenting the thecal sac without spinal stenosis or significant neuroforaminal narrowing. PX 2.

Dr. Barnabas authorized Petitioner off work on 3/8/13 to 3/22/13. On 3/15/13, Dr. Barnabas recommended physical therapy and referred her to a chiropractor for treatment of her cervical, shoulder and lumbar complaints. On 3/22/13, Dr. Barnabas continued Petitioner off work on 3/22/13 to 4/5/13. PX 2.

Petitioner's first visit the chiropractor, Dr. Carrion, was on 3/26/13. Petitioner again gave a consistent history of accident and pain in her neck to her left arm with numbness and tingling in her 3-5<sup>th</sup> digits and severe to moderate left shoulder sharp pain. PX 2. Petitioner also complained of back pain and left leg pain. Range of motion was noted as limited in her left shoulder due to pain on exam. Under the diagnosis of shoulder sprain/strain, cervical sprain/strain, cervical radiculopathy, and lumbar sprain/strain Petitioner was given chiropractic manipulation and manual therapy. 12 visits were ordered. PX 2.

Petitioner attended chiropractic care through her next visit with Dr. Barnabas on 4/5/13. On that date, Petitioner continued to complain of lower back pain 6/10 and left shoulder pain 8/10. Dr. Barnabas returned Petitioner to light duty work with restrictions against lifting, carrying, and pulling more than 5 to 10 pounds and no stooping or bending. Petitioner was to remain on modified duty through 4/19/13. PX 2.

Petitioner continued with chiropractic care as of 4/9/13. On that date it was noted that Petitioner started work and had some increase in pain in her left shoulder and neck areas. PX 2. The range of motion of the left shoulder and cervical areas were decreased with sharp and severe pain noted. However, some improvement was noted in her condition. Petitioner continued with chiropractic care and reported continued improvement in her cervical and left shoulder pain. She reported being able to perform household and work chores with less pain and discomfort. PX 2. On 4/19/13, Dr. Barnabas continued Petitioner on modified duty through 5/3/13. PX 2. At trial, Petitioner testified that she is able to perform the light duty work.

On 4/24/13, Petitioner was reassessed by Dr. Carrion. Petitioner continued to report moderate sharp left shoulder pain and moderate pain in her neck and left arm but was no longer experiencing numbness and tingling in her 3-5<sup>th</sup> digits on the left hand. Petitioner continued to report moderate back pain. Improvement since her first visit was noted at 30 -35%. 12 more visits were ordered. PX 2. Petitioner attended chiropractic visits through 5/2/13 with some improvement noted but continued pain complaints. PX 2.

On 4/30/13, Dr. Barnabas noted "patient has low back and shoulder pain. The pain level is 7/10. She has received 6-7 weeks of physical therapy and not doing better so sent to a pain specialist and orthopedic surgeon". On exam, Dr. Barnabas noted left shoulder reveals tenderness on flexion and extension and abduction. Jobe's and Neer's are negative. For her back forward flexion is painful." PX 2. Dr. Barnabas referred Petitioner to Dr. Giannoulas for her left shoulder and to Dr. Chunduri for pain management. PX 2. On 5/7/13, Dr. Chunduri ordered an EMG of Petitioner's left upper and lower extremities. PX 2. Petitioner reported continued left shoulder pain to Dr. Barnabas on 5/8/13 who continued his orthopedic recommendations and was waiting for Dr. Chanduri's recommendations. On 6/4/13, Dr. Barnabas continued Petitioner under the same restricted work duties. He was waiting for the EMG testing which was not authorized. Petitioner testified that she continues to take prescribe pain medication.

Petitioner testified that she stopped seeing Dr. Barnabas and stopped going to PT because she could not pay for the treatment. Furthermore, she testified that she could not see Dr. Barnabas until she brought him the "study" he wanted. At trial, Petitioner requested authorization of the recommended testing and for continued treatment pursuant to Section 8(a) of the Act. Petitioner testified that her left arm and neck continue to hurt. Home exercises are helping but she is unable to carry her baby or perform household chores due to her shoulder pain. Petitioner testified that she had no shoulder pain before this accident. Petitioner was not specific at trial regarding a request for continued low back care but focused primarily on her left shoulder complaints.

Matt Romine testified at trial in his capacity as the manger at the McDonalds where the accident occurred. He has worked 18 years for Respondent. Mr. Romine testified that Petitioner returned to light duty accommodated work the first week of April 2013. He testified that Petitioner returned to full duty work at the end of April or beginning of May 2013 and has been performing her full duties since that time. He has observed Petitioner performing these duties and has not observed Petitioner having any difficulties or complaints while working full duty.

RX 4 is a video of the accident as it occurred on 3/1/13 at approximately 12:47 pm. Prior to that time the video depicts Petitioner working the drive thru window using both arms actively. The video depicts a



vendor working on the beverage machine near the window. At approximately 12.47 pm a metal object falls from the beverage machine area apparently striking Petitioner's left elbow region. The object does not appear to strike Petitioner's head, neck or left shoulder. The Arbitrator notes the action occurred very quickly. Petitioner is seen thereafter holding her left elbow or the area just above her left elbow with her right hand. Petitioner is seen working a few more minutes at the drive thru window clutching her elbow on a few occasions but continuing to use both arms although somewhat favoring the left arm. RX 4.

At Respondent's request, Petitioner attended a Section 12 exam with Dr. Lanoff on May 9, 2013. Dr. Lanoff reviewed Petitioner's medical records from Dr. Barnabas and Dr. Carrion and reviewed the lumbar and shoulder MRI reports and films. Dr. Lanoff noted that the lumbar MRI showed a minor disk protrusion which he noted was "normal for age and not clinically relevant." He noted the left shoulder MRI was "negative" showing a "mild biceps tendinosis in the distal supraspinatus tendon, which is seen quite commonly and normal for age. This is obviously not posttraumatic tendinosis. This is not an uncommon finding and certainly does not correlate to the patient's symptoms."

Petitioner reported cervical, left shoulder, left arm, thoracic and lumbar pain with pain down the left leg to the knee and to the foot. Dr. Lanoff performed a cervical, shoulder and lumbar exam with many positive Waddell findings on lumbar exam. Dr. Lanoff opined that Petitioner's exam was considerably nonorganic but not exaggeratedly so. Based on his exam of Petitioner and on his reading of the "pristine" MRI tests he concluded "I do not see any physical malady in this woman. I do see nonorganic pain behaviors, in addition to the lack of any objective pathology. I do not see any medical diagnosis other than subjective complaints that are out of proportion to the objective findings with the possibility of some possible soft tissue cervical and trapezius injuries. However, this is complicated by the fact that she complains of pain in the majority of her body on her left side." Dr. Lanoff concluded that the trapezius strain may be related to the accident of 3/1/13 but "by now it should have improved after eight weeks. I would state it is no longer related." RX 2. Dr. Lanoff "released" Petitioner to full duty unrestricted work and placed her at MMI. He determined that no further testing or treatment was necessary.

Dr. Lanoff viewed the work accident video the day after his observations at the Section 12 exam and wrote another report after viewing the video on 5/10/13. He determined that the metal rack struck Petitioner on the left upper arm just above the elbow and her left lower extremity. He further noted that in his view the object did not strike any portion of Petitioner's head, neck shoulder or anywhere along her cervical, thoracic or lumbar spine. RX 3. Petitioner is seen on the video thereafter holding her left forearm, elbow and left lateral upper arm. Dr. Lanoff wrote, "based upon the video, I do not see any injury to the patient's cervical spine, trapezius, or left shoulder. There may have been a glancing blow to her left upper arm and to the left forearm, however, I do not see any significant impact, let alone impact to the areas that she claimed in the office. The video does not change my opinion in any way." RX 3.

### CONCLUSIONS OF LAW

The above findings of fact are incorporated into the following conclusions of law.

#### **F. Is Petitioner's current condition of ill-being causally related to the injury?**

The Arbitrator initially notes that accident is not at-issue. ARB EX 1. Petitioner was clearly struck by a falling metal object at work on 3/1/13 as depicted in RX 4. However, Respondent disputes whether

Petitioner's continued complaints and request for continued medical treatment are casually connected to that injury. The Arbitrator finds Petitioner failed to prove her current condition of ill-being is causally related to the March 1, 2013 accident, as she reached maximum medical improvement for her documented complaints as of May 9, 2013.

In support thereof, the Arbitrator places greater weight on the video footage of the March 1, 2013 incident, as well as the opinions of Dr. Martin Lanoff as supported by that video. The Arbitrator notes that Dr. Lanoff examined Petitioner and issued his opinions regarding her condition and maximum improvement prior to viewing the video. Dr. Lanoff viewed the video the day after the Section 12 exam and noted that his opinions were buttressed by the video depiction of the accident. The Arbitrator agrees.

At best, the video depicts Petitioner being struck in the left forearm by a falling object. The video of the incident shows the object did not strike Petitioner in the neck or left shoulder, as she testified. She did not appear to have been jostled or to stumble once struck. Petitioner did not grab her shoulder or neck after the incident occurred. A minute or so after the incident, she grabbed her left arm around her elbow. Again, the Arbitrator places great weight on the footage of the incident, which does not show an injury to the neck or shoulder as Petitioner originally complained of to her treating physicians and for which she received extensive conservative treatment.

Again, the Arbitrator notes that Dr. Lanoff noted Petitioner had extreme complaints of pain without any objective findings on exam. Dr. Lanoff opined that Petitioner possibly suffered soft tissue cervical and trapezius injuries but that this strain was no longer related to the accident of 3/1/13 as the condition should have improved after eight weeks. He further opined that Petitioner's exam and the video did not support Petitioner's complaints of pain in the majority of her body on her left side. RX 2. The Arbitrator finds Dr. Lanoff's opinions persuasive and finds Petitioner reached maximum medical improvement on May 9, 2013 for her initial complaints of pain. As such, Petitioner failed to prove her current condition of ill-being is causally related to the March 1, 2013 incident.

**J. Were the medical services provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?**

Based on the findings on the issue of causal connection, the Arbitrator further finds that Respondent is to pay Petitioner the reasonable and necessary medical expenses incurred through May 9, 2013 pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid.

**K. Is Petitioner entitled to any prospective medical care?**

Based on the Arbitrator's findings on the issue of causal connection, the Arbitrator further finds that Petitioner is not entitled to prospective medical care or expense pursuant to Section 8(a) of the Act.

**M. Should penalties or fees be imposed upon Respondent?**

Based on the Arbitrator's findings on the issue of causal connection and on the opinion of Dr. Lanoff, the Arbitrator further finds that Respondent's conduct was not unreasonable or vexatious so as to justify the imposition of the requested penalties under Section 19(k) of the Act. Insofar as the request was made based on Respondent's failure to authorize additional medical treatment, Petitioner's request is further denied.

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF WILL )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Nunzia Maciacci,

Petitioner,

**14IWCC0246**

vs.

NO: 13 WC 206

Partyline Distributions,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, medical expenses, and permanent disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 7, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

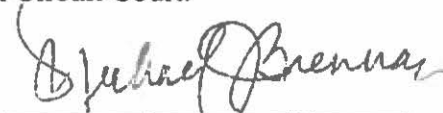
14IWC0246

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

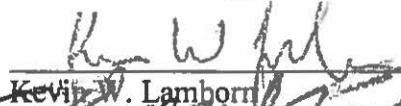
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

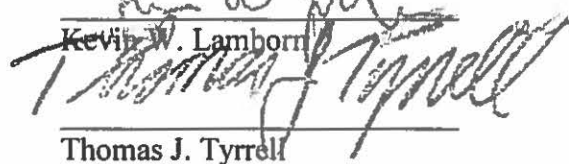
DATED: APR 01 2014



Michael J. Brennan



Kevin W. Lamborn



Thomas J. Tyrrell

MJB:bjg  
0-3/17/2014  
52

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

**MUCIACCI, NUNZIA**

Employee/Petitioner

**14IWCC0246**  
Case# **13WC000206**

**PATRYLITE DISTRIBUTION**

Employer/Respondent

On 6/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2988 CUDA LAW OFFICES  
ANTHONY CUDA  
6525 W NORTH AVE SUITE 204  
OAK PARK, IL 60302

2437 WESSELS & SHERMAN PC  
ANTHONY J CARUSO JR  
2035 FOXFIELD RD  
ST CHARLES, IL 60174



STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF KANE )

☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
 ARBITRATION DECISION  
 19(b)

**Nunzia Muciacci**  
 Employee/Petitioner

Case # **13 WC 206**

v.

Consolidated cases: \_\_\_\_\_

**Partylite Distribution**  
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Robert Falcioni**, Arbitrator of the Commission, in the city of **New Lenox**, on **May 15, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ Is Petitioner entitled to any prospective medical care?
- L. ☐ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☐ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_



141WCC0246

**FINDINGS**

On the date of the alleged accident, **September 19, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

**ORDER**

Denial of Beneficent:

Because the alleged accidental injuries did not arise out of the employment, benefits are denied.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
\_\_\_\_\_  
Signature of Arbitrator

*May 31, 2013*  
\_\_\_\_\_  
Date

ICArbDec19(b)

JUN - 7 2013

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Petitioner testified that on September 19, 2012, she was on her break in the company cafeteria (lunchroom) at approximately 1:15 – 1:30 p.m. when the accident as alleged herein occurred. Under the Personal Comfort Doctrine, the arbitrator finds that the Petitioner was “in the course of” her employment at that time and place.

Petitioner further testified that she was sitting in a chair. The chair was hard case plastic with a metal frame and was not on wheels per the Petitioner’s testimony and two Respondent witnesses with no indication that it was broken. Petitioner testified that the chairs were slippery and had been so for some time before the accident.

As such, the Petitioner testified that she stood up, the chair slid, and she fell to the ground. A co-worker testified on behalf of the Respondent that she saw the Petitioner stand-up, lose her balance, and fall to the floor. Further, the Petitioner’s supervisor testified on behalf of the Respondent that after the incident, she arrived in the cafeteria and she noticed that the floor was neither slippery nor wet; there was no debris nor objects on the floor and the chair was not broken.

Based upon a review of Petitioner’s testimony along with the two Respondent witnesses and the record as a whole, the arbitrator finds that the Petitioner failed to prove that her injuries “arose out of” her employment with the Respondent. In support of this finding, the Arbitrator cites the case of 12 IWCC1090, Henderson v. State of Illinois, Department of Human Services (see attached), where it was found that the Petitioner failed to prove that her injuries arose out of her employment when sitting in a hard cast plastic chair with a metal frame and was not on wheels and which slid out from under her, causing her to fall and injure herself. As such, compensation is denied.

06 WC 47122  
Page 1

14IWCC0246

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF WILL )

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input checked="" type="checkbox"/> Reverse <u>Accident</u>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <u>down</u>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GILDA C. HENDERSON,

Petitioner,

vs.

NO: 06 WC 47122

STATE OF ILLINOIS  
DEPARTMENT OF HUMAN SERVICES,

12IWCC1090

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, and nature and extent, hereby reverses the Decision of the Arbitrator on the issue of accident for the reasons set forth below and vacates the awards of medical expenses and permanent partial disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 1) Petitioner testified that on August 14, 2005, she was sitting in a chair and fell out of it.
- 2) Petitioner testified that the chair was in the day room of the Baker housing unit and she recalled that the floor had been waxed the night before.
- 3) Petitioner testified that she was sitting in the chair and writing notes. The chair was hard-cast plastic with a metal frame and was not on wheels. There was a table in front of her.
- 4) Petitioner testified that, as she was sitting in the chair, it "just left from underneath" her and she fell to the floor.

Based upon a review of Petitioner's testimony and the record as a whole, we find that Petitioner failed to prove that her injuries arose out of her employment with Respondent and find that she was not exposed to an increased risk by merely sitting in the chair. Even assuming that

14IWCC0246

Q-Dex On-Line  
www.qdex.com

12IWCC1090

06 WC 47122  
Page 2

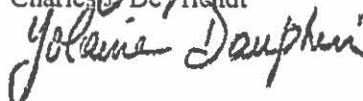
the floors were waxed the night before, Petitioner has failed to prove how this fact contributed to her falling out of the chair, which was not on wheels. The Commission declines to find a compensable accident under the facts of this case.

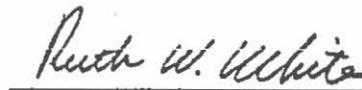
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator is reversed on the issue of accident and benefits are denied.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: OCT - 9 2012

  
Charles J. DeYriendt

  
Yolaine Dauphin

  
Ruth W. White

SE/  
O: 8/16/12  
49

## ILLINOIS WORKERS' COMPENSATION COMMISSION

## NOTICE OF ARBITRATOR DECISION

O-Dex On-Line  
www.illccom.com

14IWCC0246

HENDERSON, GILDA C

Employee/Petitioner

Case# 06WC047122ST OF IL DEPT OF HUMAN SERVICES

Employer/Respondent

12IWCC1090

On 11/22/2011, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.05% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0139 CORNFELD & FELDMAN  
JIM M VAINIKOS ESQ  
25 E WASHINGTON ST SUITE 1400  
CHICAGO, IL 60602-1803

0639 ASSISTANT ATTORNEY GENERAL  
CHARLENE C COPELAND  
100 W RANDOLPH ST 13TH FL  
CHICAGO, IL 60601

1745 DEPT OF HUMAN SERVICES  
BUREAU OF RISK MANAGEMENT  
100 N NINTH ST  
ROOM 103  
SPRINGFIELD, IL 62765

6502 ST EMPLOYMENT RETIREMENT SYSTEMS  
2101 S VETERANS PARKWAY\*  
PO BOX 19255  
SPRINGFIELD, IL 62794-9255

CERTIFIED BY E-FILE AND E-FILE COPY  
SUBMITTED TO ILL. CC ON 11/22/11

NOV 22 2011

KIMBERLY D. JANAS Secretary  
Illinois Workers' Compensation Commission

STATE OF ILLINOIS )

COUNTY OF WILL )

<input type="checkbox"/>	Injured Workers' <sup>O-Dex On-Line</sup> <del>Benefit Fund (\$4(d))</del>
<input type="checkbox"/>	Rate Adjustment Fund (\$3(g))
<input type="checkbox"/>	Second Injury Fund (\$8(e)(18))
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

**141WCC0246**

**GILDA C. HENDERSON**

Employee/Petitioner

v.

STATE OF ILLINOIS

DEPARTMENT OF HUMAN SERVICES

Employer/Respondent

Case # 06 WC 47122

**121WCC1090**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Robert Falcioni**, arbitrator of the Commission, in the city of **Joliet**, on **April 20, 2010 and December 13, 2010**. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was the respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to the respondent?
- F. ☒ Is the petitioner's present condition of ill-being causally related to the injury?
- G. ☐ What were the petitioner's earnings?
- H. ☐ What was the petitioner's age at the time of the accident?
- I. ☐ What was the petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to petitioner reasonable and necessary?
- K. ☐ What amount of compensation is due for temporary total disability?
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon the respondent?
- N. ☐ Is the respondent due any credit?
- O. ☐ Other \_\_\_\_\_



## FINDINGS

- On August 14, 2005, the respondent *was* operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship *did* exist between the petitioner and respondent.
- On this date, the petitioner *did* sustain injuries that arose out of and in the course of employment.
- Timely notice of this accident *was* given to the respondent.
- In the year preceding the injury, the petitioner earned \$ 38,234.04; the average weekly wage was \$ 735.27.
- At the time of injury, the petitioner was 35 years of age, *single* with -0- children under 18.
- Necessary medical services *have not* been provided by the respondent.
- To date, \$ -0- has been paid by the respondent for TTD and/or maintenance benefits.

## ORDER

- The respondent shall pay the petitioner the sum of \$ 441.16/week for a further period of 15 weeks, as provided in Section 8d(2) of the Act, because the injuries sustained caused 3% loss man as a whole.
- The respondent shall pay the petitioner compensation that has accrued from August 14, 2005 through December 13, 2010, and shall pay the remainder of the award, if any, in weekly payments.
- The respondent shall pay the further sum of \$ 3,419.56 for necessary medical services, as provided in Section 8(a) of the Act.
- The respondent shall pay \$ \_\_\_\_\_ in penalties, as provided in Section 19(k) of the Act.
- The respondent shall pay \$ \_\_\_\_\_ in penalties, as provided in Section 19(l) of the Act.
- The respondent shall pay \$ \_\_\_\_\_ in attorneys' fees, as provided in Section 16 of the Act.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of arbitrator

November 15, 2011

Date

NOV 22 2011

In response to Arbitrator's decision relating to "C" (Did an ~~accident~~ occur that arose out of and in the course of the petitioner's employment by the respondent? and "F" (Is the petitioner's present condition of ill-being causally related to the injury?) the Arbitrator finds the following facts:

The Petitioner is an employee of the State of Illinois, Department of Human Services Treatment Detention center. Her date of hire was May 7, 2001. Her job title was Security Therapy Aide 1. Her job duties were to secure residents in the facility by recording activity and reporting activities to the control center. The treatment facility is a maximum security detention center. The inmate/residents are locked behind solid doors with chuckhole entry. Some other duties include constant walking, charting, and standing. Every door and entryway has a lock for which she has a key.

On August 14, 2005, Petitioner had another accident while assigned to the Baker housing unit. It was during the night shift and the floors were being waxed. Petitioner testified that she was sitting on a plastic hard-cast chair at a table. While sitting, the chair started to slide out from under her and Petitioner fell to the floor. She hit her right side, including her right hand, back, and head. Petitioner treated immediately at University of Illinois Medical Center and was diagnosed with right wrist pain, cervical spine muscle spasm, and dizziness. A CT scan was performed of the neck with normal findings.

The Arbitrator finds that Petitioner had an accident arising out of and in the course of her employment and that the subsequent treatment was causally related and notes the commission decision in the case of Gossett v. Hoopston Memorial Hospital 01 WC 32621 (2005)

In response to Arbitrator's decision relating to "L" (What is the nature and extent of the injury?) the Arbitrator finds the following facts:

The Arbitrator finds that Petitioner had a diagnosis of right wrist pain, neck spasms, and dizziness awards 3% man as a whole under Section 8d(2).

In response to Arbitrator's decision relating to "J" (Were the medical services that were provided to petitioner reasonable and necessary?) the Arbitrator finds the following facts:

The Arbitrator, after finding for the Petitioner as to accident and causation, finds the Respondent liable for the following medical bills incurred for treatment at this point to Petitioner:

Univ. of Ill. Medical Center	\$2,819.00
Treatment for right hand (\$762.00) and cervical spine (\$2,057.00)	
Joliet Pain Center	<u>600.56</u>
Treatment for left and right hands; cervical spine	
<b>TOTAL</b>	<b>\$3,419.56</b>

12IWCC1090

14IWCC0246

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF LAKE )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Richard Bavaro,

Petitioner,

**14IWCC0247**

vs.

NO: 12 WC 13367

Chicago Tribune,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability and medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 17, 2013 is hereby affirmed and adopted.


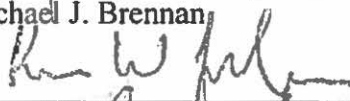
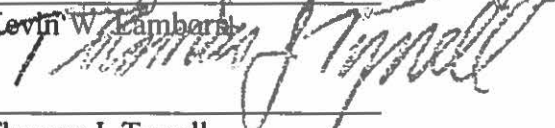
IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$33,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 01 2014

  
\_\_\_\_\_  
Michael J. Brennan  
\_\_\_\_\_  
Kevin W. Lamborn  
\_\_\_\_\_  
Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR  
CORRECTED

**14IWCC0247**

**BAVARO, RICHARD**

Employee/Petitioner

Case# **12WC013367**

**CHICAGO TRIBUNE**

Employer/Respondent

On 6/17/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0664 LAW OFFICE OF JOSEPH G HAFFNER  
800 WAUKEGAN RD  
SUITE 200  
GLENVIEW, IL 60025

1120 BRADY CONNOLLY & MASUDA PC  
SURABHI SARASWAT  
ONE N LASALLE ST SUITE 1000  
CHICAGO, IL 60602

14IWCC0247

STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF Lake )

☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

CORRECTED  
 ILLINOIS WORKERS' COMPENSATION COMMISSION  
 ARBITRATION DECISION  
 19(b)

**Richard Bavaro**  
 Employee/Petitioner

Case # 12 WC 13367

v.

Consolidated cases: \_\_\_\_\_

**Chicago Tribune**  
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Lee**, Arbitrator of the Commission, in the city of **Waukegan**, on **March 20, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?  
☐ TPD      ☐ Maintenance      ☒ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☒ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_



14IWCC0247

FINDINGS

On the date of accident, **November 2, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$70,145.40**; the average weekly wage was **\$1348.95**.

On the date of accident, Petitioner was **57** years of age, *married* with **0** dependent children.

Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$20683.44** for TTD, \$            for TPD, \$            for maintenance, and **\$10,966.50** for other benefits, for a total credit of **\$31,649.94**.

ORDER

*The Respondent shall pay the Petitioner TTD benefits of \$899.30 for 72 weeks pursuant to Section 8b of the Act. See attached.*

*The Respondent shall pay for prospective medical care for Petitioner's total knee arthroplasty pursuant to Sections 8a and 8.2 of the Act. See attached.*

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
\_\_\_\_\_  
Signature of Arbitrator

6/14/13  
\_\_\_\_\_  
Date

JUN 17 2013

(C) Did an accident occur that arose out of and in the course of the Petitioner's employment by Respondent

1. The Petitioner testified that on November 2, 2011, and prior thereto, he was employed by the Respondent as a truck driver, and on said date and time, he was working in Lake Zurich, Illinois. The Petitioner further testified that while performing his duties at said place and time, and while in the process of climbing up in to the tractor of the tractor trailer, he was caused to slip as he was extending his left leg up to what would be the third step on his climb up the trailer. The Petitioner testified that, as a result of his left foot slipping, gravity caused his body to fall toward the ground, and in an effort to keep himself from falling to the ground, he held tightly to the truck, which caused him to sustain an injury to his right leg. He further testified that, at that time, he felt considerable pain in the right knee, but stepped down to the ground and attempted to walk off the pain. Petitioner further testified that he proceed to his next stop in Arlington Heights and, while standing on the loading dock at this stop, he squatted down to reach the handle of the rear door of the truck, and while doing so, experienced a sudden sharp pain in the right knee. Petitioner testified that he returned to the shop in Chicago and immediately went to the emergency room for treatment.

2. That the medical records (Petitioner's Exhibits numbers 1 and 2) contain a history as given to Concentra Medical Center and Dr. Baker at Wheaton Orthopaedics. Said history is consistent with Petitioners testimony at arbitration.

3. Respondent presented no evidence in rebuttal.

4. Based on the aforementioned, the Arbitrator finds that the Petitioner sustained an accident arising out of and in the course of his employment by Respondent on November 2, 2011.

(F) Is Petitioner's current condition of ill-being causally related to the injury:

1. Following the injury, the Petitioner testified that he began to feel pain immediately. After returning to his station, Petitioner testified that he was seen at Northwestern Hospital Emergency Room. That same day, as required by the Respondent, he made an appointment with the company's doctor, Concentra Medical Center. Petitioner testified that he instructed the Concentra Medical Center that he had an injury on the job on the previous evening, November 2, 2011.
2. The Petitioner further testified, and the records reflect, that at the Concentra Medical Center on November 3, 2011, the Petitioner was examined, diagnosed with a leg/knee sprain and instructed to return to work with a no squatting or knelling restriction, no climbing restriction as well as a no driving restriction. Lastly, he was instructed to wear a knee brace. Thereafter, the Petitioner testified that he had a follow up appointment and physical therapy was recommended. Petitioner further testified that he underwent a few courses of physical therapy without noticing any benefit. The Petitioner further testified, and the records reflect, that on November 15, 2011 he was advised by Respondent's doctor, Concentra Medical Center, to undergo an MRI of the right knee, which was completed on November 18, 2011. Petitioner further

testified that, upon receiving the results of the MRI, Concentra Medical Center directed him to schedule an appointment with an orthopedic surgeon.

3. Dr. Baker of Wheaton Orthopaedics examined the Petitioner on November 28, 2011. Dr. Baker opined, per his medical records and testimony, that the Petitioner's symptoms were consistent with an exacerbation of a pre-existing condition, with an impression of Osteoarthritis right knee with acute traumatic synovitis. At that time, Dr. Baker proceeded with a steroid injection to attempt to provide the Petitioner with some relief.
4. On December 19, 2011, the Petitioner once again was examined by Dr. Baker. At said time, Dr. Baker opined that the steroid injection afforded the Petitioner some relief, but said relief lasted only a few days. As the Petitioner's condition was otherwise unchanged, Dr. Baker ordered a Synvisc injection of the right knee. On December 29, 2011, the Petitioner was again examined by Dr. Baker and was given the Synvisc injection.
5. The Petitioner next visited with Dr. Baker on January 26, 2012. At that time, the Petitioner advised the doctor that the injection helped for about 2 weeks, but his right knee pain had then returned to the pre-injection state. At that time, Dr. Baker again examined the Petitioner and based on his examination, Dr. Baker opined that all non-surgical measures had been exhausted, and as such, recommended that the Petitioner undergo a right total knee arthroplasty.
6. The Petitioner next visited with Dr. Baker on April 17, 2012. At said time, Dr. Baker again examined the Petitioner and opined again that the Petitioner

required a right total knee arthroplasty and that the Petitioner would be unable to return to work until after said procedure was complete.

7. Dr. Baker testified that the Petitioner has been a patient of his for some time, and specifically, that the Petitioner had previously been a patient of his for a right knee injury in 2004 ( Pet. Ex 3 page 7-8). Dr. Baker testified that he performed a surgery on the right knee in May of 2004 and released the Petitioner from treatment in October of 2004. Dr. Baker testified that the Petitioner sustained a hyperflexion injury as a result of the occurrence on November 2, 2011 ( Pet Ex 4 page 6-7) Dr. Baker further testified that, as of his April 17, 2012 appointment with the Petitioner, he continued to note that there was audible crepitation on bending and straightening of the right knee. Dr. Baker further testified that when the Petitioner sustained the November of 2011 injury, this injury pushed him over the edge, that the injury was a permanent aggravation of a pre-existing condition, causing pain since the date of injury and the reason for the need for the total right knee replacement. (Pet Ex 3 page 19-20 and Pet Ex 4 page 20) Dr. Baker further testified that he made no such recommendation for a total knee replacement when releasing the Petitioner back to work after the 2004 treatment. (Pet Ex 3 page 20) Dr. Baker further testified that he bases his opinion that the injury of November 2011 caused the need for the right total knee arthroplasty as the Petitioner was functioning well prior to the November 2, 2011 occurrence, and subsequent to that, and as a result of the occurrence, his ability to ambulate declined. (Pet Ex 4 page 26-27)

8. Dr. Brian Cole testified on behalf of the Respondent. Dr. Cole examined the Petitioner on two occasions, March 22, 2012 and September 29, 2012. Dr. Cole testified that he could not state that the Petitioner was a candidate for a right knee replacement prior to the date of the occurrence, November 2, 2011, specifically because he failed to ask the Petitioner the proper questions to state such an opinion. ( Resp Ex 3 page 18, 24-25) Dr. Cole further testified that the Petitioner did sustain an aggravation of a pre-existing condition as a result of his work occurrence on November 2, 2011 and that the Petitioner is now a candidate of a right knee replacement. ( Resp Ex 3 page 19 and 21) In short, Dr. Cole opined that the Petitioner was not in need of a knee replacement prior to the date of occurrence, November 2, 2011, that as a result of said occurrence, the Petitioner aggravated a pre-existing condition and that the Petitioner is currently a candidate for right knee replacement. Dr. Cole's testimony provides no medically related opinions to suggest that the Petitioners present condition of a medical need for a right total knee arthroplasty is not causally related to the injury.
9. Based on the aforementioned and the Arbitrators review of the medical records and testimony, the Arbitrator finds that the injury sustained by the Petitioner was causally related to the accident of November 2, 2011. The Arbitrator finds that the opinions of Dr. Baker as expressed in the medical records and the testimony of Dr. Baker, as well as the testimony of the Petitioner, are more persuasive then the testimony of Dr. Cole.

(K) Is Petitioner entitled to any prospective medical care?

1. The Petitioner testified that Dr. Baker has advised that the Petitioner undergo a right total knee arthroplasty. The Respondent's IME doctor, Dr. Brian Cole, agrees with the recommendation of a right total knee arthroplasty. Per the finding in Section (F) above, the Petitioner is entitled to receive the recommended medical care of the right total knee arthroplasty

(L) What temporary benefits are in dispute?

1. The Petitioner testified that, due to the injuries suffered as a result of the November 2, 2011 occurrence, he was instructed not to work from November 3, 2011 to the date of the hearing, March 20, 2013. The Petitioner testified that, initially, from November 3, 2011 through November 28, 2011, he was instructed not to work by the Concentra Medical Center. Thereafter, since November 28, 2011, Dr. Baker had instructed the Petitioner not to work and said work restriction is permanent until a right total knee arthroplasty is performed on Petitioner.
2. The medical records of Dr. Baker corroborate the Petitioner's testimony. Specifically, Petitioner's Exhibits 1 and 2, the medical records of Concentra Medical Group and Wheaton Orthopaedics, reflect work restrictions from November 3, 2011 to present.
3. That Respondent presented the testimony of Dr. Cole to dispute the Petitioner's inability to work. Dr. Cole opines that the Petitioner may not return to work without restrictions, but that those restrictions are unrelated to the injuries sustained as a result of the November 2, 2011 occurrence. Dr. Cole's



testimony is not credible as he testified that he has no opinion if the right total knee replacement was required prior to November 2, 2011 and further testified that the Petitioner is now a candidate for said replacement.

4. The Arbitrator finds that the Petitioner was temporarily totally disabled from November 3, 2011 through March 20, 2013. That the Respondent shall pay the Petitioner TTD benefits of \$ 899.30/week for 72 weeks which equals \$64,749.60.

(N) Is the Respondent due any credit?

1. The Arbitrator finds the Respondent is due a credit for TTD in the amount of \$ 31,649.94 representing TTD paid in the amount of \$20,683.443 and long term disability payments paid in the amount of \$10,966.50.

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF COOK )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input checked="" type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input checked="" type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Erika (Granera) Moran, Widow and  
 next of kin to Michael Moran, Decasesd,

Petitioner,

**14IWCC0248**

vs.

NO: 07 WC 50823

J & W Delivery Systems and Joseph Orto  
 d/b/a J & W Delivery Systems and the Illinois  
 Treasurer, as ex-officio custodian of the  
 Injured Workers' Benefit Fund,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondents herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, wages, rate, permanent disability and medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 21, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0248

IT IS FURTHER ORDERED BY THE COMMISSION that commencing on the second July 15<sup>th</sup> after the entry of this award, the petitioner may become eligible for cost-of-living adjustments, paid by the Rate Adjustment Fund, as provided in Section 8(g) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Illinois State Treasurer as ex-officio custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under Section 4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 01 2014

  
Michael J. Brennan

  
Kevin W. Lamborn

  
Thomas J. Tyrrell

MJB:bjg  
0-3/17/2014  
52

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**141WCC0248**

(GRANERA) MORAN, ERIKA, WIDOW & NEXT  
OF KIN TO MORAN, MICHAEL DECEASED

Case# 07WC050823

Employee/Petitioner

J & W DELIVERY SYSTEMS & JOSPEH ORTO  
DBA J & W DELIBERY SYSTEMS & THE  
ILLINOIS STATE TREASURER AS EX-OFFICIO  
CUSTODIAN OF THE INJURED WORKERS'  
BENEFIT FUND

Employer/Respondent

On 2/21/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.13% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0641 HARRIETT LAKERNICK ESQ  
203 N LASALLE ST  
SUITE 2100  
CHICAGO, IL 60601

BRADLEY H FOREMAN PC  
120 S STATE ST  
SUITE 535  
CHICAGO, IL 60603

4987 ASSISTANT ATTORNEY GENERAL  
LAURA MARTIN  
100 W RANDOLPH ST 13TH FL  
CHICAGO, IL 60601

STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF COOK )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input checked="" type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input checked="" type="checkbox"/> | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input type="checkbox"/>            | None of the above                     |

**ILLINOIS WORKERS' COMPENSATION COMMISSION**  
**ARBITRATION DECISION**  
**FATAL**

**Erika (Granera) Moran, Widow and next of kin**  
**to Michael Moran, Deceased,**  
 Employee/Petitioner

Case # 07 WC 50823

**v.**  
**J & W Delivery Systems, & Joseph Orto, DBA J & W Delivery Systems,**  
**and the Illinois State Treasurer, as ex-officio custodian of the**  
**Injured Workers' Benefit Fund,**  
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Milton Black**, Arbitrator of the Commission, in the city of **Chicago**, on **August 23, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☒ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☒ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Decedent's employment by Respondent?
- D. ☒ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to Respondent?
- F. ☒ Is Decedent's current condition of ill-being causally related to the injury?
- G. ☒ What were Decedent's earnings?
- H. ☒ What was Decedent's age at the time of the accident?
- I. ☒ What was Decedent's marital status at the time of the accident?
- J. ☒ Who was dependent on Decedent at the time of death?
- K. ☐ Were the medical services that were provided to Decedent reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- L. ☒ What compensation for permanent disability, if any, is due?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

On the date of accident, **August 15, 2007**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Decedent and Respondent.

On this date, Decedent *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Decedent's death *is* causally related to the accident.

In the year preceding the injury, Decedent earned **\$60,275.40**; the average weekly wage was **\$1,178.32**.

On the date of accident, Decedent was **45** years of age, *married* with **1** dependent child.

Respondent *hasnot* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$0**.

Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

The Arbitrator finds that Decedent died on **August 15, 2007**, leaving **2** survivors, as provided in Section 7(a) of the Act, including Erika Moran, widow, and Michael Joseph Moran, son.

## ORDER

Respondent shall pay death benefits, commencing **August 15, 2007**, of **\$392.77/week** to the surviving spouse, *Erika Moran*, on her own behalf and **\$392.78/week** to *Erika Moran*, natural parent and guardian of the minor child, *Michael Joseph Moran*, born **May 23, 2005**; until **\$500,000.00 has been paid or 20 years**, whichever is greater, have been paid, because the injury caused the employee's death, as provided in Section 7 of the Act.

If the surviving spouse dies before the maximum benefit level has been reached, and the children herein named still survive, Respondent shall continue to pay benefits until the youngest child reaches 18 years of age; however, if such child is enrolled as a full-time student in an accredited educational institution, payments shall continue until the child reaches 25 years of age. If any child is physically or mentally incapacitated, payments shall continue for the duration of the incapacity. If no children named herein are alive upon the death of the surviving spouse, payments shall cease.

If the surviving spouse remarries, and no children remain eligible, Respondent shall pay the surviving spouse a lump sum equal to two years of compensation benefits; all further rights of the surviving spouse shall be extinguished.

Respondent shall make payments for not less than six years to any eligible child under 18 years of age at the time of death.

Respondent shall pay **8,000.00** for burial expenses to the surviving spouse or the person(s) incurring the burial expenses, as provided in Section 7(f) of the Act.



Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the *Rate Adjustment Fund*, as provided in Section 8(g) of the Act.

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

*Milton Black*

Signature of Arbitrator

February 20, 2013

Date

FEB 21 2013

### FINDINGS OF FACT

This claim has been filed on behalf of Erika Moran, widow, and Michael Joseph Moran, son, of Michael David Moran, the decedent. The named Respondents are J&W Delivery Systems (hereinafter (J&W), Joseph Orto doing business as J&W Delivery Systems (hereinafter "Orto"), and the Injured Workers' Benefit Fund. J&W did not maintain workers' compensation insurance. Orto appeared at the hearing, was represented by counsel, and participated in the proceedings. The Illinois Attorney General's office appeared on behalf of the Illinois State Treasurer, as *ex-officio* custodian of the Injured Workers' Benefit Fund, and participated in the proceedings. The Petitioner alleges that on August 15, 2007 the decedent was employed by J&W as a night driver to deliver luggage and that while making deliveries he was involved in a single vehicle crash, which resulted in his death.

Orto was called as an adverse witness. He further testified upon questioning by his attorney and by the assistant attorney general. Orto testified that he was the owner of J&W, which was incorporated in Illinois. Orto

testified that he was the president, sole shareholder, and sole member of the board of directors. He testified that the corporation was not still in existence. He then testified that he has not filed an annual report for 2011, "so it should be dead". He then testified that he did not ever have a statement of dissolution. Orto testified that J&W closed in March of 2009 and was incorporated in December of 1999. He then testified that J&W was "obviously not" dissolved.

Orto testified that J&W delivered mishandled airline luggage and that it also delivered tires outside of Illinois. Orto testified that J&W worked out of O'Hare and Midway airports in addition to airports in Memphis and San Antonio and that J&W had contracts with more than 50 airlines. Orto testified that he had rented a warehouse in Schiller Park, Illinois, that the airlines would phone in job orders and provide work tickets, and that he, his wife, or his daughter would pick up luggage at the airport and deliver to the warehouse. Orto testified that delivery persons never went to the airport, that they only picked up luggage at his warehouse, and that there was no set employee delivery schedule. Orto testified that Gene's Delivery Service (hereinafter "Gene's") sublet space in his warehouse, did the same work as J&W, and sometimes delivered luggage for J&W. Orto testified that when he closed his doors, that he walked out on his lease, and that that court case "is over".

Orto testified that drivers would show up at different times, that he had no assurance the drivers would show up, that sometimes he had to call drivers to come in, and that sometimes he had to make deliveries himself. Orto testified that he did not chastise drivers if there were not there to make deliveries. Orto testified that he did not supply telephones or two way radios to the drivers and that the drivers could call in on their own. Orto testified that he did not hire the drivers and that they were independent contractors. Orto testified that he believes he had written contracts with the drivers specifying independent contractor status but that he could not find any of the signed contracts. Instead, he brought in a blank unsigned agreement form (RX2) and a blank unsigned Illinois Workers Compensation insurance rejection form (RX3). Orto testified that he did not instruct drivers on what work orders they had to take or what routes to use. He testified that deliveries were divided into zones based on distance from the airport, which was the basis for payment rates. Orto testified that a few weeks

before decedent's accident he provided drivers with shirts with had the J&W logo, that drivers were not required to wear these shirts, that there was no dress code, and that drivers did not have J&W signage on their vehicles. Orto testified that he did not control the drivers. Orto testified that if a driver could not complete a delivery, he was required to call back to the office. Orto testified that drivers were paid a percentage of what the airlines paid per each delivery and that the airlines did not all pay the same rate. Orto testified that drivers submitted groups of luggage invoices periodically to be paid. Orto testified that drivers were not paid for gas or car maintenance and that insurance and any other benefits were not provided. Orto testified that he did not withhold income or social security taxes and that he would submit 1099 tax forms.

Orto confirmed that the decedent was one of the drivers for J&W. Orto could not recall how the decedent was hired and thought it was a few months before the accident. Orto testified that he required proof of insurance for the vehicle used for deliveries. Orto testified that he found out about the decedent's death when he tried to call him about some luggage that the decedent had picked up for delivery and the bags had not yet been returned. Orto testified that he called the decedent's wife and found out about the car crash. Orto testified that he received some of the undelivered luggage that had been left in the decedent's car and that he delivered this luggage himself. Orto testified that after the accident there were a number of work slips for delivered luggage that was submitted by an attorney for the Petitioner. Orto testified that he could not turn these slips into the airlines to be paid himself but that he paid out what was owed through the attorney.

Orto testified that sometimes the decedent made deliveries for Gene's, and Orto submitted a purported check from Gene's (RX5). Orto also testified about a group of luggage slips and job tickets (RX6) and luggage information from the undelivered baggage (RX4). These group exhibits include luggage information for bags taken by the decedent to be delivered on August 14, 2007, the night of the accident. Orto testified that some of the work orders were J&W and that some of the luggage tags with the same date were from Gene's. Orto testified that he does not know which delivery service the decedent was driving for at the time of the

accident. He had two work orders from Gene's and four from J&W. Orto testified that he was aware that the decedent worked another job during the day.

J & W did not have workers' compensation insurance at the time of the decedent's accident (PX11).

James Oesterreich testified that he was employed by AJR International (hereinafter "AJR"). He verified that the decedent worked for AJR as an electronic manufacturer manager and that the decedent was so employed during August of 2007. He testified that at that time, the decedent worked the 6:00 am to 2:30 pm shift at AJR. He testified to a payroll record for the decedent covering 51 weekly checks issued from September 1, 2006 through August 10, 2007. Excluding vacation pay, the AJR annual earnings are \$50,846.40, which divided by 51 equals \$996.99 (PX10 B).

The Petitioner testified that she is the widow of Michael Joseph Moran. They were married on December 23, 2006 (PX1). She testified that they have one child, named Michael David Moran, who was born on May 23, 2005 (PX3). The Petitioner testified that the decedent started working for J&W in February of 2007 or in 2006. The Petitioner testified that the decedent worked three days a week for J&W. She testified that this was set by a schedule, but it changed every week. The Petitioner testified that the decedent's hours at J&W were flexible but that he did not make his own schedule. The Petitioner testified that the decedent worked nights and never went to work before 6:00 pm, because he had another job as a manager with AJR during the day. She testified that the decedent had worked for AJR since 1984 or 1985. He worked there full time for AJR from 9:00 am to 5:00 pm. The Petitioner testified that she had heard of Gene's but did not know if the decedent had worked for Gene's.

The Petitioner testified that decedent drove his own vehicle during deliveries for J&W. He was paid based on how much luggage he delivered. The Petitioner was not sure if the decedent was paid hourly. The Petitioner testified that the decedent paid for his gas. The Petitioner testified that the decedent had a uniform for work, which was a shirt with initials. She testified that the decedent had the uniform towards the end of his employment with J&W. She was not sure if he had it for three weeks or a month prior to the accident. The

Petitioner was not sure if the decedent was required to wear it every day he worked. She believed he wore it most days he went to work.

The Petitioner testified she found out about the decedent's death when she received a phone call from the police department. She was told she would have to come and identify the body at the coroner's office. The decedent was driving his vehicle at the time of the accident. The Petitioner testified that according to the death certificate the decedent died at the scene. The death certificate states that the decedent died of traumatic asphyxia and compression of the chest from a SUV roll over on August 15, 2007 at approximately 2:19 am (PX2). He was pronounced dead at 3:25 am. The accident occurred on Interstate Highway in Peotone Township in Will County Illinois (PX2).

The Petitioner recovered a number of items from the vehicle. She recovered a document reciting the name and telephone number of J&W, the names and cell phone numbers of 5 dispatchers, and the names and cell phone numbers of 44 drivers. The decedent's name and cell phone number are among the listed drivers (PX7). She also recovered a work order from the night of the accident. The work order is for luggage from British Airway and states that it will be delivered by J&W to 1550 State, Rt. 50 Bourbonnais 60914 (PX6). Petitioner also presented tax form 1099 from 2007 and 2008 issued by J&W to the decedent. The 2007 form 1099 shows \$7,509.00 and the 2008 form 1099 shows \$1,920.00 for a total of \$9,429 (PX9).

### **CONCLUSIONS OF LAW**

#### **Was the Respondent operating under and subject to the Illinois Workers' Compensation Act?**

It is undisputed that J&W was a delivery service that required carriage by land, loading and unloading of luggage, the operation of a warehouse, and gasoline driven motor vehicles. Therefore, it was operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act.

#### **Was there an employee-employer relationship?**

Orto testified that he did not control the drivers. The Arbitrator finds Orto's denial of control, as well as

most of Orto's testimony, to be lacking in credibility.

The document recovered from the vehicle crash listed name and telephone number of J&W, the names and cell phone numbers of 5 dispatchers, and the names and cell phone numbers of 44 drivers, including the decedent. That document in the possession of the decedent, while in the performance of his work, strongly suggest that J&W and its drivers could and would be in contact to determine status and to assert control.

Orto testified that delivery persons had no set employee schedule. However, he further testified that the decedent worked another job during the day. Accordingly, Orto knew that the decedent worked nights at J&W.

Orto testified that he provided drivers with shirts with had the J&W logo and that drivers were not required to wear the shirts. The Arbitrator does not believe that drivers were provided with shirts that drivers were not required to wear.

Orto testified to written independent contractor agreements that he failed to produce. The blank unsigned forms that he submitted are given no weight. The Arbitrator does not believe that drivers executed written independent contractor agreements.

Orto testified that sometimes the decedent made deliveries for Gene's, and Orto submitted a purported check from Gene's. There is no explanation of or independent corroboration for the issuance of the purported check. That document is given no weight. There is no credible evidence that decedent worked for Gene's.

The nature of J&W's work in Illinois is the pickup and delivery of mishandled luggage. Based upon all of the credible evidence, the Arbitrator is persuaded that the decedent was employed by J&W to perform the delivery of mishandled luggage. Payment was based upon the deliveries. The decedent provided the essential tool, his vehicle. No specialized skill was required. J&W had the *de facto* power to terminate its drivers because it had the sole power to assign or not assign a delivery to any driver.

Based upon the foregoing, the Arbitrator finds that there was an employee-employer



relationship between the Michael David Moran and J&W Delivery Systems.

**Did an accident occur that arose out of and in the course of Decedent's employment with the Respondent-Employer J&W?**

The decedent's vehicle crashed on an interstate highway while transporting misplaced luggage. The death certificate states that the decedent died of traumatic asphyxia and compression of the chest. There is no indication of any other cause of death.

Based upon the foregoing, the Arbitrator finds that an accident occurred that arose out of and in the course of the decedent's employment by employer- respondent.

**What was the date of accident?**

The death certificate establishes that the date of accident is August 15, 2007.

**Was timely notice of the accident provided to the Respondent-Employer J & W?**

Orto learned of the death when he received calls regarding undelivered luggage the day after his accident. He then called the home of the decedent's home, spoke to the Petitioner, and found out about the car accident and death. Accordingly, the Arbitrator finds Respondent had timely notice.

**Is Decedent's present condition of ill-being causally related to the accident?**

The death certificate states that the decedent died of traumatic asphyxia and compression of the chest. There is no indication of any other cause of death.

**What were the Decedent's earnings?**

The Petitioner testified that the decedent may started have started working for J&W in 2006. Orto testified that he was aware that the decedent worked another job during the day. The decedent's total earnings from J&W are \$9,429.00. Without proof of an actual start date at J&W or specific parts of weeks worked at

J&W, those total earnings will be divided by 52, which yields \$181.33.

The decedent's weekly earnings from AJR equate to \$996.99.

The sum of \$996.99 and \$181.33 is \$1,178.32.

Based upon the foregoing, the Arbitrator finds that the decedent's average weekly wage was \$1,178.32.

**What was the Decedent's age at the time of the accident?**

The death certificate establishes that the decedent was 45 years old when he died.

**What was the Decedent's marital status at the time of the accident?**

The testimony of the Petitioner, as corroborated by the marriage license, establishes that she was married to the decedent at the time of his death.

**Who was dependent on Decedent at the time of death?**

The testimony of the Petitioner, as corroborated by the marriage license, establishes that she was married to the decedent at the time of his death. Her further testimony, as corroborated by the birth certificate, establishes that Michael Joseph Moran, a son was born May 26, 2005.

Based upon the foregoing, the Arbitrator finds that Erika Moran, widow of the Michael David Moran, the decedent, and Michael Joseph Moran, son of Michael David Moran, were dependents at the time of death.

**What compensation for permanent disability is due, if any?**

Based upon the evidence of earnings the widow and son shall be entitled to receive a total of 784.55 weekly to be divided between them, as provided by the Act. The widow shall be further entitled to statutory burial expenses of \$8,000.00.

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF )  
 WILLIAMSON )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)(18))
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Craig Mitchell,

Petitioner,

vs.

NO: 12WC 35386

State of Illinois/Menard Correctional Center,

**14IWCC0249**

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, temporary total disability, medical, "denial of motion to supplement the record" and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 7, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

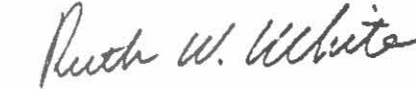
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED: APR 02 2014  
o032614  
CJD/jrc  
049

  
Charles J. DeVriendt

  
Daniel R. Donohoo

  
Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

MITCHELL, CRAIG

Employee/Petitioner

Case# 12WC035386

SOI/MENARD CORRECTIONAL CENTER

Employer/Respondent

14IWCC0249

On 5/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC  
6 EXECUTIVE DR  
SUITE 3  
FAIRVIEW HTS, IL 62208

1350 CENTRAL MGMT SERVICES RISK MGMT  
WORKERS' COMPENSATION CLAIMS  
PO BOX 19208  
SPRINGFIELD, IL 62794-9208

0558 ASSISTANT ATTORNEY GENERAL  
KENTON J OWENS  
601 S UNIVERSITY AVE SUITE 102  
CARBONDALE, IL 62901

0502 ST EMPLOYMENT RETIREMENT SYSTEMS  
2101 S VETERANS PARKWAY\*  
PO BOX 19255  
SPRINGFIELD, IL 62794-9255

0498 STATE OF ILLINOIS  
ATTORNEY GENERAL  
100 W RANDOLPH ST  
13TH FLOOR  
CHICAGO, IL 60601-3227

CERTIFIED as a true and correct copy  
pursuant to 820 ILCS 305/14

MAY 7 2013



*[Signature]*  
KIMBERLY B. JANAS Secretary  
Illinois Workers' Compensation Commission

STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF WILLIAMSON )

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION**  
**ARBITRATION DECISION**  
 19(b)

Craig Mitchell  
 Employee/Petitioner

Case # 12 WC 35386

v.

Consolidated cases: n/a

State of Illinois/Menard Correctional Center  
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on March 12, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?  
☐ TPD      ☐ Maintenance      ☒ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

14IWCC0249

**FINDINGS**

On the date of accident, August 27, 2012, Respondent was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship did exist between Petitioner and Respondent.

On this date, Petitioner did sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned \$82,896.00; the average weekly wage was \$1,594.15.

On the date of accident, Petitioner was 48 years of age, married with 2 dependent child(ren).

Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0.00 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$0.00. At trial, the parties stipulated that Respondent paid TTD or extended benefits through January 22, 2013.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

**ORDER**

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall receive a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

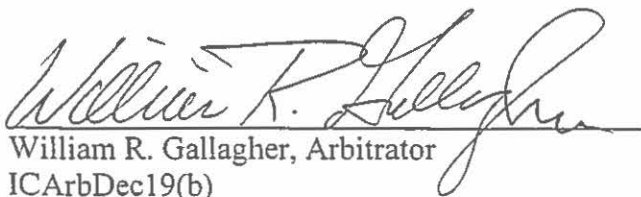
Respondent shall authorize and make payment for the medical treatment recommended by Dr. Gornet.

Respondent shall pay Petitioner temporary total disability benefits of \$1,062.77 per week for six and six-sevenths (6 6/7) weeks, commencing January 23, 2012, through March 12, 2013, as provided in Section 8(b) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
William R. Gallagher, Arbitrator  
ICArbDec19(b)

May 3, 2013  
Date

MAY -7 2013



Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment for Respondent on August 27, 2012. According to the Application, Petitioner was assaulted by an inmate and sustained injuries to the buttocks, face/neck, upper lip, back, body as a whole, left elbow/arm, left eye and teeth. There was no dispute that Petitioner sustained an accidental injury; however, Respondent disputed liability in regard to the low back on the basis of causal relationship. This case was tried as a 19(b) proceeding and Petitioner sought an order for temporary total disability benefits, medical bills and prospective medical treatment. At trial, the parties stipulated that either temporary total disability benefits or extended benefits had been paid through January 22, 2013, and that the disputed temporary total disability benefit period was January 23, 2013, onward.

Petitioner worked for Respondent as a Correctional Officer and since May, 1997, held the rank of Correctional Lieutenant. Petitioner testified that on August 27, 2012, he was assaulted by an inmate exiting the yard and was knocked to the ground. Petitioner immediately sustained pain to the left cheek, left arm/elbow, teeth and right hip. Petitioner was taken to the Healthcare Unit at Menard and was then sent Chester Memorial Hospital.

The Chester Memorial Hospital records noted that Petitioner had left facial pain, a laceration to the upper lip, a chipped tooth, lateral neck pain and pain at the right second MCP joint. It was also noted that Petitioner had multiple areas of bruising. Petitioner was treated and released. These records did not make any reference to Petitioner having low back pain.

On August 29, 2012, Petitioner was seen by Dr. Jay Pickett and, at that time, Petitioner complained of headaches, neck pain, left facial pain, swelling of the upper lip and left elbow pain. Dr. Pickett prescribed medication and stated that physical therapy might be necessary for the neck and elbow if the pain was persistent. When seen by Dr. Pickett on September 12, 2012, Petitioner's condition was improved in regard to the neck, left elbow and facial contusions; however, Petitioner complained of right low back pain and a right gluteal hematoma. Dr. Pickett diagnosed Petitioner with both a left elbow and right lumbar strain. Dr. Pickett recommended application of ice several times a day and physical therapy. When Dr. Pickett saw Petitioner on September 28, 2012, there were no significant improvements in either his left elbow or low back symptoms and he recommended a referral to an orthopedic surgeon. Dr. Pickett saw Petitioner again on October 19, 2012, and he gave him a steroid injection in the SI area. Dr. Pickett restated his recommendation that Petitioner be referred to an orthopedic specialist.

On November 29, 2012, Petitioner was seen by Dr. Matthew Gornet, an orthopedic surgeon. Petitioner informed Dr. Gornet about the accident and it was noted that Petitioner did not discuss low back pain with his doctor at the time of the first visit, but that over the next two weeks, the back pain became progressively worse. Petitioner stated that he had no significant prior problems with his low back and that his low back symptoms worsened with bending, lifting and prolonged sitting, standing or walking. On examination, straight leg raising was positive at 45° on both sides and x-rays did reveal some facet changes. Dr. Gornet opined that Petitioner's current symptoms were related to the work injury. Dr. Gornet authorized Petitioner to be off work and recommended that he have an MRI scan performed.

An MRI scan was performed on November 29, 2012, which, according to the radiologist, revealed disc herniations at L3–L4 and L4–L5. Dr. Gornet performed a steroid injection and facet block on December 19, 2012. When Dr. Gornet saw the Petitioner on January 17, 2013, he noted that the injection helped to relieve some of his right sided pain but that Petitioner still had back and bilateral leg pain. At that time, Dr. Gornet stated that he was referring Petitioner to Dr. Granberg for additional epidural injections and blocks but that if Petitioner's condition did not improve, a CT myelogram and surgery might be indicated. Dr. Gornet continued to authorize the Petitioner to be off work.

Petitioner testified that he had a prior left hip problem approximately 10 years ago for which he sought some chiropractic treatment. Petitioner denied any prior injuries to the head, teeth, left elbow or low back. Petitioner further testified that immediately following the accident he felt some "pressure" in his low back but thought that it was nothing more than some soreness. Unfortunately, the back pain did not resolve and grew progressively worse to where he did report it to Dr. Pickett on September 12, 2012, 16 days subsequent to the accident.

Petitioner admitted to going deer hunting in November, 2012, and that he killed a deer on November 18, 2012. Petitioner also testified that his 15-year-old son accompanied him when he went deer hunting and that Petitioner did not engage in any strenuous activities and avoided walking on uneven terrain.

Petitioner testified that he still takes over-the-counter medication to alleviate his symptoms and that he underwent the CT myelogram the day before the hearing of this case. Petitioner is to be seen by Dr. Gornet sometime in the near future to discuss treatment options. Petitioner has still not returned to work for Respondent at this time. Respondent did not obtain a Section 12 examination of Petitioner so there is not a medical opinion contrary to that of Dr. Gornet.

#### Conclusions of Law

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of ill-being in regard to the low back is causally related to the accident of August 27, 2012.

In support of this conclusion the Arbitrator notes the following:

Petitioner's testimony that he had no prior injuries to his low back was un rebutted. While Petitioner did not report any low back pain to Dr. Pickett until 16 days post-accident, Petitioner's testimony that he had no significant low back pain immediately following the accident and that it became worse over time is credible especially given the nature of the multiple injuries that he sustained as a result of the assault. Dr. Gornet's opinion that Petitioner's low back symptoms are related to the accident is likewise un rebutted because Respondent chose not to obtain a Section 12 examination of the Petitioner.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and that Respondent is liable for payment of the medical bills associated therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1 as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In support of this conclusion the Arbitrator notes the following:

All of the medical care that has been provided to the Petitioner has been conservative and reasonable. Further, there is no medical opinion stating that any of the medical treatment provided to Petitioner was either unreasonable or unnecessary.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner is entitled to prospective medical treatment as recommended by Dr. Gornet.

In support of this conclusion the Arbitrator notes the following:

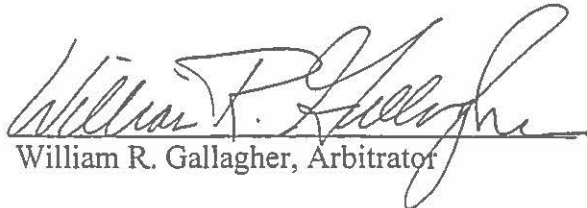
The Arbitrator notes that Dr. Gornet has recommended additional diagnostic tests and possible surgery and that there is no medical opinion to the contrary.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner is entitled to payment of temporary total disability benefits from January 23, 2013, through March 12, 2013, a period of six and six-sevenths (6 6/7) weeks.

In support of this conclusion the Arbitrator notes the following:

Dr. Gornet has opined that Petitioner is temporarily totally disabled and in need of additional medical treatment and there is no opinion to the contrary.



William R. Gallagher, Arbitrator

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF MADISON )

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Remand	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rosemary Foxworth,  
 Petitioner,

vs.

NO: 10 WC 16429

Cajun Operating Co. d/b/a Church's Chicken,  
 Respondent,

**14IWCC0250**

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection and prospective medical and being advised of the facts and law, remands this matter back to the Arbitrator in accordance to the findings and opinions stated below. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission finds that the Petitioner sustained a burn injury to the dorsum of her left hand from hot grease from a fryer. This accident occurred on April 2, 2010.

Petitioner was treated at the emergency room of Kenneth Hall Regional Hospital on April 2, 2010, and followed up with St. John's Mercy Medical Center on April 7, 2010. According to their records, Petitioner had a large blister covering the entire dorsum of the left hand and smaller blisters on the second, fourth and fifth proximal left digits. (Petitioner Exhibit 3)

14IWCC0250

Petitioner followed up with Dr. Pollack and Dr. Ross.

On April 17, 2010, Dr. Ross indicates that Petitioner has sharp pains and tingling at the burn area on the left dorsum of her hand. She sees Dr. Ross again on April 29, 2010, with complaints of painful tingling over the burned area but with no weakness of the left hand. (Petitioner Exhibit 2)

On May 5, 2010, Dr. Pollock finds that the Petitioner is doing well and her hand is fully healed. There was no infection. She had a full range of motion and her skin was healed. He found that on that date she had no carpal tunnel syndrome. He sees her once again on June 2, 2010 and finds that she is doing well, is fully healed and has no carpal tunnel syndrome and no neuromas. (Petitioner Exhibit 4)

On June 21, 2010, the Petitioner presents to the Touchette Regional Hospital. She had left forearm pain of gradual onset. The pain was mild. She gave a history of her left hand burn and denied trauma, numbness, tingling and chest pains. Petitioner indicated that exacerbating factors were unknown and that she has had this pain for "awhile." It still hurts and she doesn't know why. According to Touchette's records, her radiating symptoms were "none." (Petitioner Exhibit 5)

Petitioner sees Dr. Pollack again on July 14, 2010, and once again, he finds that her hand is fully healed. However, she complains of pain at night. He finds that her combination of pain and numbness is a questionable distribution. He questions whether Petitioner has carpal tunnel syndrome. (Petitioner Exhibit 4)

Dr. Alvarez performs an EMG on the Petitioner on September 17, 2010. Petitioner gives a history of pain in the dorsal aspect of the left hand. Since the burn, Petitioner has been experiencing intermittent burning pain in the dorsal of the hand and proximal fingers. Petitioner states her sensation was decreased in the dorsal hand and proximal fingers. According to Dr. Alvarez, the Petitioner had a normal electrodiagnostic study. There was no evidence of left focal ulnar neuropathy at the wrist or elbow. There was no evidence of a left focal median neuropathy at the wrist and no evidence of a left superficial radial neuropathy. (Petitioner Exhibit 6)

The Petitioner sees Dr. Pollack on September 22, 2010 and indicates that she is feeling much better and when informed of her negative nerve conduction test she feels better about that. The Doctor indicates that the Petitioner's numbness and tingling are specifically over the burn and is unsure that it correlates with carpal tunnel or cubital tunnel syndrome. (Petitioner Exhibit 4)

Petitioner was sent to Dr. David Brown for an Independent Medical Evaluation on March 1, 2011. He found that the hand had completely healed and that there was no contracture. He stated that it was not uncommon to have abnormal sensation over the skin after this type of burn.



14IWC0250

He goes on to state in his March 29, 2011 addendum that based on the nerve conduction studies performed on September 10, 2010, Petitioner does not have carpal tunnel syndrome. (Respondent Exhibit 1)

Petitioner continued to be seen by Dr. Ross. He treated her with injections and medications for her complaints of pain. (Petitioner Exhibit 2)

Petitioner saw Dr. Shekhani on July 11, 2011. At that time, Petitioner gave him a history of left upper extremity pain. He recommended a nerve conduction test which he performed himself on July 27, 2011. According to Dr. Shekhani that test was consistent with left median compressive neuropathy and only sensory in nature. He diagnosed Petitioner as having a left neuropathy and left upper extremity pain. On September 21, 2011, his record indicates that the nerve conduction test, which he performed, was positive for carpal tunnel syndrome. (Petitioner Exhibit 7)

It was at this time on September 27, 2011, that Dr. Ross starts treating the Petitioner for possible carpal tunnel syndrome. (Petitioner Exhibit 2)

On October 13, 2011, Dr. Sandra Tate performed another Independent Medical Evaluation on behalf of the Respondent. She was supplied with all of the Petitioner's prior medical records and tests. She does not believe that Petitioner has clinical finding of carpal tunnel syndrome nor does she believe that her symptoms are related to the burn incident. (Respondent Exhibit 2)

In reviewing Dr. Ross's records, it is clear that he wants to get a surgical evaluation from a Dr. Prieb. Petitioner also testified that Dr. Prieb believes she needs surgery. Based on the records of Dr. Ross it does not appear that Prieb saw the Petitioner.

The Commission finds that based on its review of Dr. Shekhani's deposition and records, he is not a credible witness concerning whether the Petitioner has carpal tunnel. The Commission also finds he is not credible regarding his opinions as to causal connection. (Petitioner Exhibit 8)

The Commission orders that Petitioner is entitled to one visit with Dr. Prieb. During that visit both Respondent and Petitioner will present to the Doctor all of the Petitioner's prior medical treatment and records. Dr. Prieb will then give his opinion regarding whether Petitioner needs carpal tunnel surgery and most importantly, whether that surgery is causally connected to the original burn on April 2, 2010.

The Commission remands this matter back to the Arbitrator for a further hearing pursuant to this decision.

14IWCC0250

IT IS THEREFORE ORDERED BY THE COMMISSION that this matter be remanded back to the Arbitrator for a further hearing pursuant to this decision. This award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

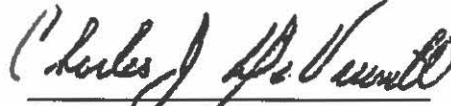
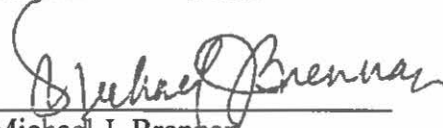
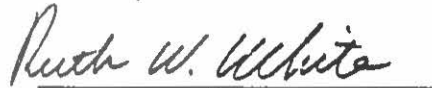
DATED:

APR 04 2014

o012914

CJD/hfs

049

Charles S. DeVriendtMichael J. BrennanRuth W. White



ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

FOXWORTH, ROSEMARY

Employee/Petitioner

Case# 10WC016429

CAJUN OPERATING CO D/B/A  
CHURCH'S CHICKEN

Employer/Respondent

**141WCC0250**

On 4/15/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0384 NELSON & NELSON  
NATHAN LANTER  
420 N HIGH ST  
BELLEVILLE, IL 62222

2871 LAW OFFICES OF PATRICIA M CARAGHER  
WILLIAM PAASCH  
1010 MARKET ST SUITE 1510  
ST LOUIS, MO 63101

STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF Madison )

☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
 ARBITRATION DECISION  
 19(b)

**Rosemary Foxworth**

Employee/Petitioner

v.

**Cajun Operating Co. d/b/a Church's Chicken**

Employer/Respondent

Case # 10 WC 16429

Consolidated cases: none

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Collinsville**, on **February 20, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☐ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☐ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

On the date of accident, **4/2/2010**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned \$**see below**; the average weekly wage was \$**see below**.

On the date of accident, Petitioner was **60** years of age, *single* with **0** dependent children.

Expenses related to medical services incurred to date were not at issue in this proceeding.

Respondent shall be given a credit of \$**see below** for TTD, TPD, maintenance, and other disability benefits.

Respondent is entitled to a credit of \$**see below** under Section 8(j) of the Act.

## ORDER

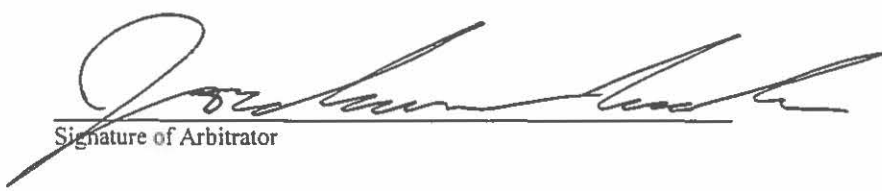
By agreement of the parties, the issues of average weekly wage, medical costs incurred to date, disability benefits due, benefits paid to date, and 8(j) credit which may be available were deferred to a future hearing.

Regarding the issue of causal relationship between the accident and the proposed medical care pursuant to Section 8(a), the treatment is denied for reasons stated in the attached decision.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

April 3, 2013  
Date

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROSEMARY FOXWORTH,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 10 WC 16429
	)	
CAJUN OPERATING CO. D/B/A	)	
CHURCH'S CHICKEN,	)	
	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

This matter was heard pursuant to Section 19(b) of the Act. Prior to hearing, the parties stipulated that issues of average weekly wage, medical costs incurred to date, disability benefits due, benefits paid to date, and 8(j) credit which may be available were deferred to a future hearing and that only causation regarding the proposed medical care under Section 8(a) would be addressed at this juncture.

STATEMENT OF FACTS

The petitioner is a 63-year-old cook for the respondent who had an undisputed accident on April 2, 2010, when she burned the back of her left hand from heated grease from a fryer. She presented at Touchette Regional Hospital on the date of accident (see PX1). She was noted to have 1<sup>st</sup> and 2<sup>nd</sup> degree burns to the back of her left hand. She was given medication and the blistering was dressed, and she was sent home.

On April 7, 2010, she presented at St. Johns Mercy Medical Center. See PX3. She complained of increased pain despite painkillers. Examination noted blistering on the back of her left hand and lesser blistering on the backs of her second through fifth fingers. She was instructed on wound care and told to follow up with burn care.

The petitioner began care with Dr. Pollack at Mercy Burn and Plastic Surgery on April 14, 2010. PX4. She was prescribed off work and given lotion for the injury.

On April 17, 2010, she saw Dr. Ross. PX2. She noted painful tingling in the burn area but denied weakness. On April 29, 2010, she reiterated those complaints. She was going to follow up with the burn unit, however. Dr. Ross's only prescription at that point was for unrelated matters.

On May 5, 2010, Dr. Pollack noted the wound was fully healed without evidence of infection and full range of motion. The skin had healed and it was specifically noted she had no carpal tunnel syndrome. She was instructed on wound care. PX4.

On June 2, 2010, the petitioner presented to Dr. Pollack. She was tearful because of pain. However, Dr. Pollack noted she was doing well, that the hand was fully healed, and that there was no infection. He noted there was "no carpal tunnel syndrome, no neuroma, no evidence of other problems." She was kept on light duty. PX4.

On June 21, 2010, she presented at the Touchette Hospital emergency room complaining of forearm pain. The history noted was of "left forearm pain for 'awhile'." They noted a history of a burn to the left hand and she stated that since then the forearm had been swollen and painful, but denied numbness or tingling. Tenderness was noted near the elbow. She was given medication. PX5.

On July 2, 2010, she returned to Dr. Ross complaining of persistent symptoms in the left hand. He also noted a history of swelling in the left elbow which appeared to have resolved. The petitioner complained of paresthesia in the left hand which he noted as "pain/paresthesia ? cause" (see PX2). He noted it would "take time" and told her to follow up with the burn unit. PX2.

On July 14, 2010, the petitioner returned to Dr. Pollack. She complained of pain at night. It was noted the condition was "Possibly CTS now? Not perfect distribution." There was no neuroma or evidence of other problems. He prescribed return to light duty work and use of carpal tunnel syndrome splints. On August 25, 2010, Dr. Pollack noted generalized anxiety "about everything right now." PX4.

On September 17, 2010, the petitioner presented for an EMG study of the left hand. On examination, no swelling or loss of strength was noted. She asserted loss of sensation in the left hand. The EMG study was conducted and revealed no neuropathy at either the elbow or the wrist. See PX6.

On September 22, 2010, Dr. Pollack noted that a nerve conduction test had proven negative and that she "feels much better." He noted the persistent symptoms as she described were "odd after such a small burn" but left her on a fifteen pound weight restriction "for now." PX4. She ceased treating with him thereafter.

On March 1, 2011, the petitioner saw Dr. David Brown at the Orthopedic Institute of St. Louis at the employer's request pursuant to Section 12 of the Act. She related a consistent history of accident. He noted no scarring and full range of motion. He opined the burn had healed and there was no associated scar contracture. He noted that burns can cause abnormal skin sensation, but that should resolve in time and she had regained good functional level. He opined she could return to work and needed no further treatment from a hand surgeon standpoint. See RX1. In an addendum on March 29, 2011, he reiterated his opinion that she was at MMI from a treatment standpoint, though he believed the abnormal skin sensation would improve over time. He did not believe

she had carpal tunnel syndrome based on his physical and clinical examination and the negative EMG study. RX1.

On June 21, 2011, the petitioner returned to Dr. Ross complaining of left arm and hand pain. Dr. Ross assessed possible RSD and provided Neurontin. On June 27, she called him describing electrical shock sensation in the hand and requesting a note saying she was still on restrictions. Dr. Ross recommended she see a workman compensation doctor for this. PX2.

On July 6, 2011, the petitioner presented at the Touchette Hospital ER. She described acute left hand pain since the day before with swelling and redness that morning extending up to her elbow. She related the burn in April 2010 and denied intervening incident, though she asserted carrying garbage out the day before had hurt. Examination noted the left hand appeared normal without scarring, swelling, bruising or discoloration. She was given medication. PX5.

On July 11, 2011, the petitioner presented to Dr. Shekhani, a pain specialist. See PX7 and PX8. Dr. Shekhani prescribed an EMG, which was done on July 27, 2011. He interpreted it as positive for left carpal tunnel syndrome. He provided medication and splints for the left wrist complaints.

On August 16, 2011, the petitioner asserted pain in the left lower arm with discoloration in the arm. On examination, however, Dr. Ross noted "good grip" and normal color. It was noted she was scheduled for a steroid injection. See PX2.

On October 5, 2011, Dr. Shekhani attempted a steroidal injection into the wrist. The petitioner reported no improvement from the injection. Dr. Shekhani thereafter recommended a surgical referral after the injection was not successful in resolving her complaints. PX7.

On October 13, 2011, the respondent had the claimant seen by Dr. Sandra Tate, a pain specialist. After she examined the petitioner and reviewed the medical records, Dr. Tate noted the petitioner had complaints of chronic pain, some of which were non-anatomic, but that the petitioner lacked clinical findings consistent with carpal tunnel syndrome and did not believe any diagnosis of carpal tunnel syndrome would be related to the April 2010 burn in any event. See RX2.

Dr. Ross continued to see her for these complaints as well as for unrelated issues during the same timeframe that Dr. Shekhani treated her. On January 10, 2012, Dr. Ross made notes that the claimant denied hair loss, dry skin, or white fingers, and "denies assoc with cold." Dr. Ross later recommended the petitioner see Dr. Prieb, a hand surgeon, for further care. See PX2.

Dr. Shekhani provided periodic treatment to the petitioner until March 5, 2012. At that time, he opined that she would have pain in her left hand for life and will require



periodic physical therapy, but was not a surgical candidate. PX7. He has not provided further care since that time.

Dr. Shekhani testified in deposition on February 14, 2013. At that time he opined there was a causal connection between the claimant's carpal tunnel syndrome and the April 2010 accident and he recommended she seek a surgical evaluation. PX8.

### OPINION AND ORDER

As stipulated by the parties, the issues of average weekly wage, medical costs incurred, disability benefits due, benefits paid to date, and credit which may be available were deferred to a future hearing and the only issue to be considered at this juncture is the proposed medical care under Section 8(a).

The petitioner submits the opinions of Dr. Shekhani regarding causal connection to the carpal tunnel syndrome diagnosis, and the Arbitrator takes note of a certain degree of skepticism from both Dr. Pollack and Dr. Ross being reflected in their records. Dr. Shekhani opines the injury caused carpal tunnel syndrome, arguing that the burns to the hand caused the compression to the wrist. However, his causal opinion relies on faulty information. His analysis does not accurately note the location or extent of the burns. In PX8 p. 33, he states the burns involved both the dorsal and palmar aspects of the hand, which is not consistent with the treating records and implies that he was under the impression that the injury was far more significant than it actually was. He also notes that an EMG would need 18 to 23 days following the accident to become positive. However, the EMG in September of 2010 was over five months following the accident. He does not adequately explain the negative test, nor the abnormal distribution of complaints referenced by multiple physicians, such as her complaints around the elbow (for instance in June 2010, PX5). He also does not explain the multiple references to "no carpal tunnel syndrome" from by Dr. Pollack, which proceeded for long after the three weeks suggested by Dr. Shekhani.

The respondent's Section 12 examiners included both a hand surgeon as well as a pain specialist. Dr. Brown detected no carpal tunnel syndrome at the time he examined her and could not explain how a burn that produced no significant scarring or contracture could have inflamed the carpal tunnel anatomy. Dr. Tate similarly found a lack of anatomical findings consistent with carpal tunnel syndrome and could not relate such a condition to the organic damage from April 2010. In this, they effectively echo Dr. Pollack, who admitted puzzlement by the extent of the claimant's ongoing complaints after the burns had healed, as well as his review of the negative EMG/NCV.

The claimant has not proven to a medical and surgical certainty that any condition of carpal tunnel syndrome is causally related to the April 2010 accident. The requested medical care is therefore denied.



